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COMMISSION REPORT NO. 3F

TO THE GENERAL ASSEMBLY OF MARYLAND

SUBJECT: Revised Article on Courts and Judicial Proceedings.

I. BACKGROUND OF CODE REVISION.

In July 1970, Governor Mandel established the Commission to Revise the Annotated Code. At the Commission's first meeting in September of that year, the Governor pointed out that the last comprehensive revision of the Maryland Code was completed in 1888, and that during the intervening years a great many statutes had been added, frequently with little or no references to existing articles of the Code or to logical relationships to existing statutes. As a result, he said, the Annotated Code has lost whatever rational cohesiveness it once had, and has become increasingly difficult to use. The Governor indicated that there now exist in the Code various inconsistencies in the statutory treatment of similar subjects, defects in organization and arrangement of statutes, and numerous instances of ambiguity or lack of clarity in the expression of legislative intent.

Governor Mandel charged the Commission with the responsibility of a formal revision of the public general laws, including an improved scheme of organization, elimination of obsolete or unconstitutional provisions, resolution of inconsistencies and conflicts in the laws, and the general improvement of language and expression.

Acting pursuant to this mandate, the Commission proceeded to study the history of Code revision in Maryland as well as recent examples of Code revision in a number of our sister states. As a result, it decided upon a rearrangement of the Code into the following 21 articles:

Agriculture	Local Government
Business Regulation	Natural Resources
Commercial Law	Occupations and Professions
Corporations and Associations	Property
Courts and Judicial Proceedings	Public Health
Criminal Law	Public Safety
Education	Social Services
Elections	State Government
Estates	Taxation and Revenue
Family Law	Transportation
General Provisions	

Each of these articles is devoted to a substantial area of the law and will contain the statutes relevant to that particular topic. This system of organization replaces the present alphabetical arrangement of Code provisions which has become somewhat disorganized with the passage of time and in any event tends to promote distribution of related materials throughout the Code, instead of concentrating them in a particular article.

Having reached a decision as to the general organization of the Code, the Commission proceeded to make tentative allocations of the present statutes to the new article, and also developed certain procedures and style guidelines for use in the revision project. Most of these are set forth in the Revisor's Manual (September, 1971) which was distributed to all members of the General Assembly in October of that year.

The next step involved detailed drafting of several of the proposed new articles. The first three are the Articles on Agriculture, Courts and Judicial Proceedings, and Natural Resources. They represent the concrete beginning of a process which, when fully completed, will make Maryland's public general laws easier to locate and easier to understand.

As these first three articles are considered by the General Assembly, it should be kept in mind that they are part of a larger pattern. Thus, a change in language or style which might seem trivial by itself should be thought of in the context of the entire revision project, in which every effort is being made to utilize consistent patterns of organization, arrangement, and language.

The basic thrust of the Commission's work has to do with formal and not substantive changes. Nevertheless, at some points in its work, the Commission has found it necessary to make recommendations which do involve the substance of the laws. In a sense, the elimination of an obsolete provision is a substantive change. Also, where the Commission has discovered inconsistencies or gaps in the laws, it has sometimes made substantive recommendations in an effort to rectify the situation. This follows the Governor's directive to eliminate inconsistencies and conflicts.

In every such case, the revisor's notes following the particular section explain the change and the reasons for it. Changes of this kind are also noted in this report.

Sometimes the Commission identified problems involving such fundamental policy decisions that it felt they should be called specially to the attention of the General Assembly for determination. These matters are also mentioned in the revisor's notes and in this report.

II. FORM OF THE REVISION BILLS.

The Code Revision Commission contemplates that most of the major new articles of the revised Code will be published as separate volumes. The new articles will not be numbered, but will be cited by name or by appropriate abbreviation.

Within each article, a standard numbering system is used. This consists of one or more digits to the left of a dash; and three or more digits to the right of a dash; essentially the same system now used in present Articles 21, 66 1/2, 93, and 95B of the Code.

The number or numbers to the left of the dash designate the title within the article. The first number or numbers to the right of the dash designate the subtitle. The remaining digits designate the section within the subtitle. Thus, §1-302 of the Courts Article is the second section in subtitle 3 of Title 1 of that article.

The Code revision bills introduced at the 1973 special session reflect this system of organization and numbering. Each bill is arranged in a similar format. Section 1 of the bill consists of the proposed revised article. The text of each article is printed in all capital letters as though it were all new material, but in most instances references to the present Code will indicate that changes are largely stylistic. This procedure is utilized to reduce the length of the bills, which would be made extraordinarily bulky if the normal symbology of printing present statutory text with brackets to show deletions and capitals to show insertions were utilized.

Each section or subsection of the proposed revised article is followed by a revisor's note which explains the changes, if any, made with respect to present law. These notes facilitate comparison of the revised article with the present law. As a further aid, a cross-reference table is attached to the bill. It shows the relation-

ship between present and proposed code provisions and vice-versa.

Section 1 of each revision bill has an unusual numbering system. Each page will bear a designation which consists of an abbreviation of the article name, a number designating the title of the new article, and a page number. Thus, in the Natural Resources bill, one might find a page numbered "N.R. § 1-3". This would mean page 3 of Title 1 of the Article.

This numbering system has been adopted to facilitate preprinting of the bills; it will also facilitate their amendment and printing for third reading, since even though there are some amendments, the entire pagination of the bill will not have to be changed. Only the title and sometimes only the pages affected will have to be reprinted.

Sections 2, 3, and following of the bills also have special page designations to facilitate the printing process. These sections of the bill list repeals of present provisions, transfers of present statutes from one article to another, and any repeals and reenactments with amendments made necessary by the revised article. As in the case of the text of the revised article itself, appropriate revisor's notes are inserted.

Each revised article, if enacted, will become effective on January 1, 1974. This will permit publication of the revised articles before they become effective and will also make it possible to amend them at the 1974 regular session.

To achieve this effective date, it has been necessary to designate each bill as an emergency bill. Thus, the final sections of each bill include the standard emergency clause. They also include other special effective date provisions which may be required, as well as provisions relating to the construction and effect of the bill.

III. THE ARTICLE ON COURTS AND JUDICIAL PROCEEDINGS.

This report is specifically concerned with the proposed Article on Courts and Judicial Proceedings. The proposed article includes substantially all provisions of the public general laws dealing with the organization and structure of the court system, its personnel, court supporting agencies, and civil proceedings in the courts. The substantive criminal laws and statutes dealing exclusively with criminal procedure will be treated in the Criminal Law Article.

Because of their very limited jurisdiction, the Orphans' Courts and the Tax Court are also treated elsewhere - the Orphans' Courts in the Article on Estates and Trusts and the Tax Court in the Article on Taxation and Revenue.

Some provisions dealing with venue, jurisdiction, or appeals are so closely intertwined with the substantive law to which they relate that they are not included in the Courts Article. Thus, certain provisions of present Article 16 of the Code relating to procedures and other matters in divorce suits are allocated to the Family Law Article. Likewise, certain landlord-tenant procedural statutes are allocated to the Property Article. Also, provisions dealing with appeals from administrative agencies or local administrative bodies are retained with the substantive laws to which they relate.

As a general guide, it may be stated that the Courts Article includes all or parts of the following present Code articles: Articles 5, 7, 9, 16, 17, 24, 26, 31A, 35, 36, 40, 42, 50, 51, 57, 60, 67, 75, 75C, 79, 80, 83, 87, 88, 90 and 96.

The article is divided into 13 titles, each of which will be discussed in detail below. The titles are as follows:

Title 1 - Court Structure and Organization

Title 2 - Court Personnel

Title 3 - Courts of General Jurisdiction - Jurisdiction/Special Causes of Action.

Title 4 - District Court - Jurisdiction

Title 5 - Limitations

Title 6 - Jurisdiction, Venue, Process and Practice

Title 7 - Costs

Title 8 - Juries

Title 9 - Witnesses

Title 10 - Evidence

Title 11 - Judgments

Title 12 - Appeals, Certiorari, and Certification of Questions

Title 13 - Court Supporting Agencies.

Each provision of the Courts Article was initially prepared by the Commission staff, the principal draftsmen being Commission Director Adkins, Associate Revisor Zdravkovich, and Assistant Revisor Melville.

In addition, Titles 9 and 10 were drafted by Associate Revisor Bartlett.

Each draft was then submitted to a Commission subcommittee chaired by Shale D. Stiller, Esquire, of Baltimore, and consisting of R. Bruce Alderman, Esquire, of Baltimore City; Honorable David L. Cahoon, of Montgomery County; James J. Cromwell, Esquire, of Montgomery County; Honorable Jerrold V. Powers, of Prince George's County; Norman P. Ramsey, Esquire, of Baltimore City; Melvin J. Sykes, Esquire, of Baltimore City; Charles W. Woodward, Esquire, of Montgomery County, and Honorable James L. Wray, of Anne Arundel County. In addition, Assistant Attorney General Fred Oken sat on the subcommittee as the representative of Attorney General Burch.

Following subcommittee approval of the various drafts, they were then submitted to the full Commission for approval.

In addition to this screening process, during the fall of 1972, Titles 1, 4, 8, 12 and 13 of the Courts Article were presented to a Legislative Council joint committee chaired by Delegate Martin A. Kircher, of Baltimore, and consisting of Senators Robert E. Bauman, Edward T. Conroy, J. Joseph Curran, James S. McAuliffe, and Melvin A. Steinberg, and Delegates James A. Lombardi, John S. McInerney, Joseph E. Owens, and Frank Heintz.

The drafts have also been submitted to a special committee of the Section of Judicial Administration of the Maryland State Bar Association, Inc., and to others concerned with the subject matter of the Article, such as the Chief Judge of the Court of Appeals, the Chief Judge of the District Court, the Director of the Administrative Office of the Courts, the clerks' and sheriffs' associations, and others.

TITLE 1 - COURT STRUCTURE AND ORGANIZATION.

Title 1 contains statutes dealing with general powers of the courts, their composition and administration, and the compensation of judges. Orphans' Courts, the Tax Court, and other administrative agencies are not covered in Title 1, or in the Courts Article.

The Commission initially intended to allocate the statutes pertaining to judicial pensions to Subtitle 7 of Title 1. However, since there is a State retirement system which administers much of the judicial pension system, the Commission decided to include the judicial pension provisions with the present provisions of Article 73B, "Pensions"; see Sections 12 and 15 of the Courts bill. This may permit the ultimate rewriting and simplification of all the pension provisions.

ORGANIZATION OF TITLE

Title 1 contains the following subtitles:

Subtitle 1 - Definitions

Subtitle 2 - General

Subtitle 3 - Court of Appeals

Subtitle 4 - Court of Special Appeals

Subtitle 5 - Trial Courts of General Jurisdiction

Subtitle 6 - District Court

Subtitle 7 - Judicial Salaries and Allowances.

SPECIFIC MATTERS

Subtitle 1 - Definitions.

This subtitle defines the terms frequently used in Title 1.

Section 1-101(b) avoids the necessity of frequent references to the component courts of the Supreme Bench of Baltimore City. The definition of "circuit court" is the same definition as that appearing in §12-101(b).

Section 1-101(c) permits the use of the term "court" in a comprehensive sense. This definition is somewhat broader than the definition of "court" appearing in Maryland Rule 5.1 because the District Court is included. Also, the Rule's reference to a court of law and a court of equity has been eliminated since this might be construed as excluding criminal courts.

Section 1-101(d) defines the term "judge" to mean a judge of a court and this definition is virtually the same as that contained in Maryland Rule 5.n. Sections 1-101(c) and (d) both make it clear that the Orphans' Court, the Tax Court, and any local tax appeal courts are not covered by this title.

It should be noted that the Commission considered a single definition title for the whole Courts Article. However, the consensus was that this was probably not practical since there would be few terms used throughout the whole Article in precisely the identical sense. In addition, consideration was given to the fact that it might be more convenient for the user to have definition provisions in each title.

Subtitle 2 - General.

This subtitle contains provisions which deal with the rule-making power of the Court of Appeals and other courts, contempt of court, prohibition against practice of law by judges, and legal residence of judges.

Section 1-201 consolidates and restates the rule-making provisions of Art. 26, §§1, 25, and 27. The portion of §27 dealing with orphans' courts is transferred to Art. 93. Subsection (a) of this section is included as a reference to the rule-making authority of the Court of Appeals, and as a legislative rule of construction. Its genesis is Art. 26, §25 of the Code, which is proposed for repeal. This subsection omits the provisions of this section which deal with the prohibition against rule-making in the criminal field and the requirement that every rule be submitted to the General Assembly. The latter requirement has not been observed since 1945, when Art. IV, §18A of the Constitution became effective. Neither of these provisions is consistent with the Constitution. The language dealing with rules of evidence is retained.

Subsection (b) is a restatement of the combined effect of Art. 26, §§1 and 27 (both proposed for repeal). It also restates Maryland Rule 1.g relative to terms of the court and references to Maryland Rule 1.f with respect to local rules. In addition, it recognizes the

possibility of a legislatively-granted rule-making power such as the power of the chief judge of the District Court to make rules; see §1-605(b) of this Title. The Commission feels that this provision must be retained because the power of "other courts" to make rules not inconsistent with the Court of Appeals rules is not necessarily the same as the power of the chief judge to make rules. The District Court is excluded from the general operation of this subsection because rule-making power is vested in the chief judge, not in the court.

Section 1-202 is derived from Art. 26, §§4 and 5. Section 4 purports to place strict limitations on the power of a court to inflict summary punishment for contempt. However, the statute is actually highly misleading since the Court of Appeals and the Court of Special Appeals have consistently held that this power is inherent in the court and may not be limited by the legislature. The Commission's draft recognizes the situation set forth in the cases and simply refers to the procedural provisions now contained in subsection (p) of the Maryland Rules and the Maryland District Rules.

Subsection (b) restates with some modifications Art. 26, §5.

Section 1-203, which deals with prohibition against the practice of law by judges, is derived from Art. 10, §29 and Art. 26, §144(b) and Canon XXX as embodied in Maryland Rule 1231.

Article 10, Sec. 29 generally prohibits in-court practice by a judge. Similar provisions are contained in Rule 1231. However, Art. 26, §144(b) contains a much broader prohibition applicable to District Court judges. The Commission believes that the broader prohibition should apply to all judges (as defined in Sec. 1-101(d)). While this may be a technical change in substantive law, it appears completely consistent with generally-accepted views and normal practice.

Subsection (b) is new and is added in an attempt to meet the problem of the judge who goes on the bench leaving behind him a share of law firm profits he has earned prior to becoming a judge. The Commission believes that without a provision like subsection (b), the subsection (a) prohibition against direct or indirect profit from practice might preclude receipt of money representing the judge's share of previously earned income. This could well operate to discourage competent lawyers from accepting judicial appointment. In addition, subsection (b) is not in conflict with Canon 5F of the Code of Judicial Conduct adopted by the American Bar Association in 1972. Rule 7, Rules of Judicial Ethics, embodied in Maryland Rule 1231, requires a judge to report such compensation annually to the secretary of the Maryland Judicial Conference. The report is subject to the scrutiny of the Commission on Judicial Disabilities and the Judicial Ethics Committee. Also, this draft is not intended to affect provisions of Art. 16, §199A, limiting a judge's right to serve as trustee, or Canons XXIV, XXV, or XXVI and Rule 6, dealing with judicial participation in various business activities.

Section 1-204, which is derived from Art. 26, §24, is intended to remove a vague reference to "the vicinity of the City of Annapolis" and instead uses the reference to residence in Anne Arundel County in general.

It is not clear from the present statute what is meant by "vicinity" and it is suggested that the broader term used in the draft is more appropriate for today's world.

Subtitle 3 - Court of Appeals.

This is a one-section subtitle introduced mainly to preserve a place for future legislation and provide a location for cross-references. It should be noted that other than provisions dealing with rule-making,

which are handled in Title 1, and the appeals material in Title 12, there is virtually no present statutory material dealing with the structure and operation of the Court of Appeals. This material is largely constitutional. The constitutional provisions dealing with the Court of Appeals appear in Art. IV of the Maryland Constitution.

Subtitle 4 - Court of Special Appeals.

This subtitle deals with the court's composition and its sessions, panels, and hearings in banc. It is derived from Art. 26, §130, as amended by Ch. 361, Acts of 1972.

Section 1-401 is adopted from the first two clauses of that statute.

Section 1-402(a) establishes the number of judges and provides for designation of the chief judge.

Section 1-402(b) provides for selection of the judges. The description of the appellate judicial circuits is omitted since they are defined in the Constitution.

In Sec. 1-403(c), a clarification is attempted with respect to in banc hearings. Art. 26, §130 provides that the "majority" of the entire court is necessary for a decision in such a case. It is not clear whether this means a majority of the full number of authorized judges or the judges actually in the office where the hearing is held. The commission has inserted the latter interpretation in §1-403(c) as a matter of practical administrative convenience. It provides that a hearing or re-hearing before the court in banc may be ordered in any case by a majority of the incumbent judges of the court. Six judges of the court constitute a quorum of the court in banc and the concurrence of the majority of the incumbent judges of the entire court is necessary for decision of a case heard or reheard by the court in banc.

Subtitle 5 - Trial courts of general jurisdiction.

This subtitle deals with jurisdiction and powers of the trial courts in general, the effect of united rules of practice and procedure on certain courts in Baltimore City, and the number of judges authorized by the Constitution or statute in each of these courts.

Section 1-503 is intended to simplify statutes providing for trial court judgeships because it is not always easy to determine under present law how many judgeships are authorized for a given county or circuit. This section is presented in a simple, tabular form to show that the number of judgeships are those authorized by the Constitution and by statute. However, no change in numbers is included. The third judgeship provided for Harford County will not become effective until July 1, 1974, pursuant to Ch. 606, Acts of 1973; see Section 21(d) of the Courts bill.

Subtitle 6 - District Court.

This subtitle includes organizational and structural provisions of Art. 26, §139 and following, dealing with the District Court. The changes are mainly stylistic.

Section 1-601 is derived from Art. 26, §§139 and 150(b). The last provision provides that the court is a court of record which has a seal is inserted for the purpose of emphasis. While all courts listed in Art. IV, §1 of the Constitution, including the District Court, are courts of record and have seals, the provisions are repeated here because the District Court has replaced many other tribunals which were not courts of record.

Section 1-605 enumerates powers and duties of the chief judge of the District Court. The basic constitutional powers of the chief judge,

as indicated in the draft, are derived from Art. IV, §41-E of the Constitution. This section is an attempt to state the chief judge's major functions in one section even though some of them are prescribed in the Constitution.

Subtitle 7 - Judicial salaries and allowances.

This subtitle contains provisions which relate to judicial salaries and allowances including reimbursement for expenses and health and hospitalization benefits.

Section 1-701, which provides that a judge's salary may not be diminished during his continuance in office, is derived from Art. IV, §14 relating to the Court of Appeals, §24, relating to the circuit courts of the counties, §31, relating to the Supreme Bench, and §41-H relating to the District Court.

There is apparently no express constitutional provision relating to the Court of Special Appeals. This section is drafted to apply to all judges. This is consistent with Art. 26, §130, which applies to the Court of Special Appeals.

Sections 1-702 and 1-704 reflect the substance of Art. 26, §47(a) as enacted by Ch. 343, Acts of 1972. The one exception is §1-702(b) which is based on a part of Art. 26, §144(a). This provision specifying the salary level of the chief judge of the District Court was not set forth in Ch. 343. However, it is presumed that it is a statement of legislative policy which should be retained for the guidance of budget-makers.

Section 1-706, which provides for reimbursement for expenses, is drafted to apply to all courts since there seems to be no reason why appellate judges should not also be reimbursed for expenses incurred on court business. The language of this section is based on Art. 26,

\$144(a) now applicable to judges of the District Court.

Also, the draft writes into law reimbursement rules generally similar to those applicable to other State employees.

Section 1-707 preserves certain local health plan rights pertaining to certain District Court judges who were formerly judges of other courts of limited jurisdiction. This section is based on Art. 26, \$144(f). It also makes it clear that the local payments are not supplementation.

Participation in such a plan by a District Court judge appears to be permissible under Op. Atty. Gen. 8/3/71, Daily Record 8/24/71.

TITLE 2 - COURT PERSONNEL.

Title 2 of the Courts Article deals with court officers and employees.

The title is organized by officer to the extent possible and by court where organization by officer is unworkable. It is hoped that this form of organization will be useful to those for whom this title will be of greatest importance: the officers of the courts.

Title 2 includes only those provisions which deal with the court-related functions of an officer which can not be properly allocated elsewhere. Provisions dealing with non-court-related functions, such as issuing licenses or boarding prisoners at the jail, are allocated with the substantive law to which they pertain, and specific semi-court-related functions, such as recording deeds, liens, and mortgages are also allocated with the substantive law governing the area, where possible.

ORGANIZATION OF TITLE

This title is divided into six subtitles:

Subtitle 1 - Officers, oaths, and bonds.

Subtitle 2 - General duties of clerks

Subtitle 3 - Sheriffs.

Subtitle 4 - Appellate Courts.

Subtitle 5 - Courts of general jurisdiction

Subtitle 6 - Officers of the District Court.

SPECIFIC MATTERS

Subtitle 1 - Officers, oaths, and bonds.

The first subtitle contains general material relating to the oaths, bonds and employment of all court personnel regardless of their position or the court they serve.

A definition section is included to avoid repetition of frequently used terms.

Section 2-102 codifies the principle that, when necessary, a court may appoint whatever personnel are required to expedite a specific proceeding. Presently, the statutes and rules specifically authorize a number of these appointments, and this section is not intended to detract from this authority. However, since Art. IV, §9 of the Constitution is somewhat broader than the present statutes, it was deemed advisable to conform the statute with the Constitution; see the Revisor's Note for a fuller discussion.

Section 2-103 is a consolidation of various sections of Art. 87, which deal with the performance of uncompleted duties after a sheriff leaves office. This section has been expanded to apply to all officers. It makes clear that although an officer is personally responsible for his official duties while he holds office, this responsibility ceases when he leaves office, and it becomes the responsibility of his successor to complete any carry over work. Under several statutes replaced by this section, if the officer dies during his term,

uncompleted work becomes the responsibility of his personal representative.

The rationale for the present statutory provisions is that in former times the fees of a clerk or sheriff were his compensation, and when he died, uncollected fees became part of his estate. These officers are now salaried and derive no personal benefit from the fees they collect.

Section 2-105 is a synthesis of the bond provisions listed in the revisor's note.

The history of these bond provisions is somewhat interesting. When bonds were first required in 1729, only clerks, sheriffs, and coroners were required to give a bond. The giving of a bond apparently had no connection with whether an officer handled money, but rather was required to insure the diligent performance of his official duties, and to enable a person who suffered damages as a result of the negligent performance of those duties to recover for the officer's breach of them. (Ch. 25, Acts of 1729.)

Many officers, such as commissioners and the clerks of the District Court do not personally give a bond, although this is technically required by present law. However, since they are the State, rather than the county, employees, they are covered by the State's blanket bond. The draft required that an officer "be covered" by a bond, to bring these personnel within the letter as well as the spirit of the law.

In general, the premium on an officer's bond is paid by the government he serves or allowed as an expense of the office; however, the officer remains personally liable to his bonding company.

Section 2-106 provides sanctions for failure to qualify for office.

Subsection (a) relates to failure to take a required oath, and substantially duplicates Art. 1, §7 of the Constitution.

Subsection (b) is derived from Art. 87, §4, relating to failure of a sheriff to give bond. This section has been expanded to cover all officers and fill a gap in the present law. Under the present law, if a clerk or commissioner took the required oath, but neglected or refused to give a bond, he would be prohibited from performing any of his official duties, but as the office would not be vacant, a successor could not be appointed.

Subtitle 2 - General duties of clerks.

This subtitle contains provisions generally applicable to all clerks, regardless of the court in which they serve. The subtitle is a synthesis of sections as discussed in the revisor's notes.

Provisions applicable only to the clerks of a specific court are allocated to the subtitle dealing with that court.

Section 2-201 spells out some of the duties of clerks. A comprehensive listing of all duties is impossible, since many duties are imposed by common law, tradition, or rule.

Section 2-202 allows a clerk to purchase necessary systems and equipment subject to the approval of the Comptroller. The present law authorizes him to contract for re-indexing without the Comptroller's approval. The Maryland Clerks' Association has approved this change; See Revisor's Note to §2-202.

Subtitle 3 - Sheriffs.

This subtitle sets forth the basic duties of sheriffs and the procedural aspects of these duties.

The material on which the subtitle is based was drawn almost exclusively from Art. 87 of the Code and deals primarily with service

of process, executions, and sales. Although some provisions on the keeping of prisoners are included in the salary section, such material, together with other law enforcement duties of sheriffs to the extent they still exist, will generally be covered in the Criminal Law, Public Safety, or Local Government Articles.

Section 2-301 sets out the general duty of a sheriff to serve all papers directed to him and authorizes service of process outside a sheriff's home county, providing a statutory basis for Rule 104(a).

Section 2-302 contains the statutory exception prohibiting a sheriff from seizing property outside his county, and provides the procedure for such seizures.

Section 2-303 requires a sheriff to file a return when he serves a paper and §2-304 provides penalties for failure to file a return.

Section 2-309 is the salary section. An attempt has been made to improve the style and organization of the section without making portions of substantive changes. Because this section ~~were~~ amended in 1973, to avoid conflict with Art. III, §35 of the Constitution, §21 of the Courts bill delays the effect of these portions until after the 1974 election.

Attention is called to the revisor's notes to the sections in this subtitle, as they provide a full discussion of all changes made and the reasons for them.

Subtitle 4 - Appellate courts.

This subtitle combines the present statutory provisions authorizing appointment of clerical and other employees by the Court of Appeals and the Court of Special Appeals and relating to the terms of their employment. As many of the court-related functions of an appellate court clerk are essentially similar to those of his trial court

counterpart (i.e. - filing papers, keeping their custody, certifying copies, etc.), they are covered in §2-201 and not repeated here.

Only a few stylistic changes have made in these sections.

Subtitle 5 - Courts of general jurisdiction.

This subtitle contains those provisions applicable to officers and employees of circuit courts which have not been covered in subtitles 1, 2, or 3 of this title, or in Title 13.

Section 2-501 is a blanket authorization for a circuit court to appoint the personnel it deems necessary to conduct the business of the court. The section is based on Art. IV, §9 of the Constitution, and on the various statutory provisions listed in the revisor's note. While these sections are proposed for repeal, there is no intention to affect any presently existing positions. Sections 16 and 17 of the Courts bill expressly provides that presently existing positions are continued.

At present some employees in some counties are covered in the public general laws, some in the public local laws, and some apparently nowhere. This blanket authorization is believed necessary to authorize many of the positions presently filled.

For example, Art. 51, §4 requires that a county have either a jury commissioner or the clerk of the court manage the jury selection process. If a jury commissioner is appointed, his compensation is to be set by law. Carroll County is the only county to authorize by statute the employment of a jury commissioner. Art. 51, §4 allows this to be done within the framework of the juror selection plan. In addition, Carroll is the only county to provide by statute discretion for the county commissioners to set the jury commissioner's salary.

Most circuit court judges employ law clerks to assist them, however, only two counties apparently authorize them by public general law.

Section 2-502 lists some of the dockets and records to be maintained by the clerks of the circuit courts. Generally, dockets and records will be dealt with, wherever possible, with the substantive material to which they apply; however, the records listed in this section do not lend themselves to this treatment.

These sections have been streamlined by omitting the lists of specific information and forms of organization presently required. It is felt that most clerks keep their records under a system which they understand, and that they will probably continue to do so, whether or not the form of the record is spelled out by statute.

Some clerks, notably in Prince George's County, keep their records on microfiche rather than in well-bound books. As/^{records} management becomes more advanced, it seems unwise to limit the development of alternate systems; see §2-202 which authorizes changes of indexing systems. Rule 1216 provides that dockets be kept in the form described by the Court of Appeals. So far, however, the court has taken no action under this rule.

Section 2-503 provides for the employment of stenographers to record testimony given before a grand jury. Although such authorization is technically unnecessary in light of §2-501, it is retained because these stenographers are required to take an oath of secrecy, and are expressly authorized to attend grand jury sessions.

This section has been expanded to apply to all counties rather than simply those enumerated presently because all counties employ such stenographers.

Section 2-504, setting the salaries of clerks, was amended in 1973. Therefore, §21 of the Courts bill delays the effective date of this section to avoid constitutional problems.

Section 2-505 combines three sections of the present law which provide for the salaries of deputy clerks as discussed in the revisor's note to the section. It should be noted that the requirement of Art. 17, §28 that a deputy clerk swear that he actually performed the work for which he is being paid, and that he gave no bribes or kickbacks in return for his job has been deleted as obsolete.

Subtitle 6 - Officers of the District Court.

This subtitle includes all provisions of the District Court act which pertain to officers and their duties. It should be noted that the material dealing with oaths and bonds of District Court officers is covered in Subtitle 1, and the duties of clerks in Subtitle 2.

As this is a fairly recent piece of legislation, only a few stylistic changes have been made. Most of the changes involved breaking down sections and general reorganization of provisions.

TITLE 3 - COURTS OF GENERAL JURISDICTION - JURISDICTION/SPECIAL CAUSES OF ACTION.

Title 3 deals with jurisdiction and special causes of action in trial courts of general jurisdiction. Jurisdiction of the District Court is covered in Title 4. Many of the non-jurisdictional provisions appear elsewhere in the Courts Article or in other articles. For example, venue provisions of Art. 16, §§23, 66(b) and 69 appear in Title 6 of this Article; the provisions of Art. 42, §§11 and 12, dealing with return of a writ of habeas corpus and the penalty for failure to make such a return appear in Title 2; the provisions of

Art. 42, §§13 and 18, requiring delivery of a true copy of the warrant of commitment or detainer to the person detained, and providing for change of custody of the person detained from one officer to another, are transferred to Article 27.

ORGANIZATION OF TITLE

Title 3 contains the following subtitles:

- Subtitle 1 - Absent persons
- Subtitle 2 - Arbitration and Award
- Subtitle 3 - Attachment
- Subtitle 4 - Declaratory judgement
- Subtitle 5 - Defamation
- Subtitle 6 - Family Law
- Subtitle 7 - Habeas corpus
- Subtitle 8 - Juvenile causes
- Subtitle 9 - Wrongful death.

SPECIFIC MATTERS

Subtitle 1 - Absent persons.

This subtitle specifies the effect of absence as evidence of death in matters relating to the disposition of property of absentees. It is derived from the Uniform Absence as Evidence of Death and Absentees Property Act, which presently appears in Art. 16, §§200 et seq. It contains several substantive changes which were made in order to resolve conflicts with other provisions of the Code. The Commission proposes repeal of all provisions dealing with receivership and in their place would rely on the more modern and comprehensive provisions of Art. 93A, providing for protection of the property of a minor or disabled person. Specifically, §§202, dealing with appointment of a receiver, and 203 dealing with notice, are recommended for repeal

and in lieu thereof, §30104 is inserted as a cross-reference providing that proceedings for the protection of property of an absentee shall be conducted in accordance with Art. 93A. The remaining sections are reorganized, modified, and new language added for the purpose of clarity.

The transition will not have adverse effects since the Courts bill provides that the revision applies only prospectively. All absentee cases brought under Art. 16 and pending on January 1, 1974 will be disposed of under the Art. 16 provisions.

The decision to reply on the Art. 93A procedure is primarily based on the fact that the provisions of Art. 93A were enacted recently and are largely inconsistent with the provisions of the Uniform Act. The Uniform Act has been adopted in only three states and amended numerous times in these states since its adoption in 1939. The change is really of a technical nature since Art. 93A, §202(b) defines a disabled person to include a person who has disappeared. Consequently, all subsequent provisions of Art. 93A should apply to protection of the property of an absent person as well.

Section 3-101 is a definition section. The terms "absentee" and "court" are defined to indicate at the outset that the provisions of Art. 93A are complementary to the provisions of this subtitle.

Section 3-102 deals with presumption of death and is derived from Art. 16, §200. In effect, it provides that mere absence creates no presumption of death. The reference to the period "of seven years" is deleted as unnecessary and confusing. At common law, the unexplained absence of a person from his residence without having been heard from for seven years raises a presumption of his death; see Robb v. Horsey, 169 Md. 277 (1935). However, this has been eliminated by this statute. Therefore, an indirect reference to the common law presumption of death

in the statutory language could cause confusion in interpreting and applying this statute. In addition, the provision dealing with sufficiency of evidence in a jury trial is deleted as unnecessary. The proceeding is in equity and there is no reason to depart from normal equity practice by providing for a jury. Also, the reference to "proceedings under Art. 93A" is included because all proceedings for the protection of the property of persons who have disappeared are to be taken under Title 2 of Art. 93 A.

Section 3-105, dealing with search for an absentee, is derived from Art. 16, §204. The term "guardian" has been substituted for "receiver". The former term is defined in Art. 93A, §101(d).

Section 3-106 is derived from Art. 16, §§205 and 207(1). It provides that if the court determines that the absentee is dead, the guardianship proceeding can be terminated pursuant to §221 of Art. 93A; see §3-106(a). Even if there is no factual basis for making a finding of death the guardianship proceedings can be terminated after five years from the appointment of a guardian. A certain portion of the estate will be paid to the Absentee Insurance Fund and the balance to the absentee's personal representatives; see §3-106(b).

Section 3-107, dealing with the Absentee Insurance Fund, is derived from Art. 16, §210, paragraphs 1, 2, and 4, and 207(b). The portion of Art. 16, §210(1) referring to termination of receivership and cases where the proceedings have been certified to the Orphans' Court is included in the preceding section. The Commission believes that the use of an Absentee Insurance Fund may be unnecessary in view of the fact that only six payments, totalling \$2,306.43, have been made to the Fund in 23 years, and no claims have ever been filed against it. In any event, this involves policy questions and deserves study by the

legislature.

Subtitle 2 - Arbitration and Award.

This subtitle contains provisions of the Uniform Arbitration Act which was approved by the National Conference of Commissioners on Uniform State Laws, and the American Bar Association in 1955. It presently appears as Art. 7 of the Code. The Act covers voluntary written agreements to arbitrate. Its purpose is to validate arbitration agreements, make the arbitration process effective, provide necessary safeguards, and provide an efficient procedure when judicial assistance is necessary.

In addition, the provisions of Art. 75, §18, dealing with the procedures upon death of either party and before an award is returned, are incorporated in this subtitle because they deal with the same subject matter and there are no similar provisions in the Uniform Act. The provisions of Art. 7, §18 dealing with appeals are proposed for repeal because they are covered by Title 12 of the Courts Article. This subtitle contains no substantive changes. All provisions are reorganized to conform to the style of the Courts and other correlating articles.

Subtitle 3 - Attachment.

This subtitle contains only five sections which are derived from Art. 9, §§1, 2, and 14, as amended by Ch. 252, Acts of 1973. It provides for attachment on original process and attachment on judgment or decree. It also contains provisions which are similar or complementary to Rules 623 and G45.

The provisions of Art. 9, §§31 and 32, dealing with attachment of wages, will be placed in the Commercial Law Article because they contain material beyond the scope of the Courts Article. For the present, they are retained in Art. 9. It is anticipated that the Commercial Law Article will be submitted to the General Assembly in 1974.

The venue provisions of Art. 9, §36 appear in Title 6.

Subtitle 4 - Declaratory judgment.

Subtitle 4 is the Uniform Declaratory Judgment Act, which presently appears in Art. 31A. The Act was approved by the National Conference of Commissioners on Uniform State Laws, and the American Bar Association in 1922. The act has been adopted in 41 states.

The language of the Act has been clarified, and obsolete provisions proposed for deletion. The definition of "person", which appears in §3-401, has been modified to cover all persons who may be affected in the declaratory judgment proceedings. In §3-404, the provisions dealing with a jury trial are revised to reflect the fact that jury trial is not available in a court of equity. This is consistent with Rule 517, which abolished the practice of transferring issues of fact arising in an action in equity to a court of law for an advisory verdict. Other provisions of the same section are proposed for deletion because they are covered by Rules 554 and 560.

Section 3-405 has been modified to include an exception concerning members of a class in a class action. The exception provides that if declaratory judgment is granted in a class action, it will bind all members of the class. It is needed in order to make clear that the full benefits of a declaratory judgment action apply in a class suit.

Subtitle 5 - Defamation.

This subtitle contains only four sections. The material relates to liability for defamatory statements impugning a woman's chastity

or defaming political opponents and other persons. The provisions, which presently appear in Art. 88, §§1, 2, and 4, and Art. 75, §6 are basically retained in their present form. It should be noted that the sections concerning defamation of a woman do not extend protection to men whose chastity is subjected to slanderous words.

It is suggested that the General Assembly may wish to consider extending protection to all persons regardless of sex; see Art. 46 of the Declaration of Rights.

Subtitle 6 - Family Law.

This subtitle relates to jurisdiction of a court of equity over adoption, custody, guardianship, maintenance and support of a child, divorce, alimony, annulment of marriage, and the division of personal property when the court grants a divorce.

The language of these sections is derived from Article 16. The purpose of this subtitle is to designate the court which has jurisdiction in these matters. The substantive provisions of Art. 16 which relate to domestic relations are allocated to the Family Law Article, but will be retained in Art. 16 pending preparation of the new article.

Subtitle 7 - Habeas Corpus.

Except for the provisions which are proposed for repeal or transfer to the Criminal Law Article, this subtitle incorporates all provisions of Art. 42 which relate to habeas corpus.

The material is structured in seven sections and revised stylistically to conform to the style of the Courts Article. The obsolete language is proposed for deletion.

In §3-707 the provision which apparently requires inclusion of a transcript of the proceedings conducted incident to the habeas

corpus petition before the application for relief to appeal is granted, is deleted as an obvious typographical error. The deletion is consistent with the court's decision in Bigley & Fleming v. Warden, 16 Md. App. 1 (1972).

Article 42, §21, which provides for granting the writ during term or vacation, is proposed for repeal as obsolete; Rule 1205 covers this area by providing that the court shall be in session from Monday through Friday, except on the days designated as legal holidays and that in emergency matters this schedule does not apply. It may be noted that habeas corpus proceedings are "emergency matters" and the court is open every day for the purpose of granting a writ of habeas corpus.

The provisions of §§11 and 12 of Art. 42 are transferred to and incorporated in Title 2 of the Courts Article because these sections relate more to the material of Title 2 while only marginally relate to habeas corpus.

Sections 13 and 18 of Art. 42 are proposed for transfer to the Criminal Law Article for the same reasons.

Subtitle 8 - Juvenile causes.

This subtitle contains all provisions of Article 26 concerning juvenile causes except those which apply to Montgomery County. The Montgomery County provisions are incorporated in Title 4 of the Courts Article, dealing with District Court jurisdiction. The consolidated provisions include a number of selected provisions of Sections 91 through 101 of Article 26. The language of these provisions has been modified to conform to the style of the Courts Article.

Section 3-801 contains definitions of terms used in this subtitle, which are listed alphabetically for practical reasons. The section reflects changes made by the 1973 legislative session.

Section 3-805 grants the juvenile court jurisdiction over adults, and is derived from Art. 26, §§70-2(a)(7), 70-2(e)(3), and 94. The provisions requiring adjudication of a child as a condition precedent to prosecution of an adult is proposed for repeal because it is often a hindrance and even a bar to successful prosecution of an adult, and is in conflict with certain provisions relating to "minors without proper care or guardianship."

Subsection (b) of this section contains the consolidated provisions of Art. 26, §§70-2(e)(3) and 94 since they cover the same subject matter - i.e. election by an adult to be tried either in the juvenile court or in the criminal court before a jury.

Section 3-820 provides that certain statements incident to the informal adjustment or during preliminary inquiry may not be admitted in evidence prior to conviction or prior to the adjudication. The Commission decided to propose to the General Assembly that this limitation be extended to apply to statements made at a waiver hearing. This would alleviate many problems which exist at present. Obviously, lack of protection affects an open discussion and free exchange of ideas, which are characteristic of all proceedings in the juvenile court.

Section 3-839 provides that in certain cases a parent may be liable for acts of a child. The provision of this section, which grants the court power to punish a parent for contempt if he fails to pay damages caused by acts of his child, is of doubtful constitutionality, since Art. III, §38 of the Maryland Constitution prohibits imprisonment for debt. Generally, if a party is brought into court for contempt to compel performance of a money decree, that party may not be imprisoned; Dickey v. Dickey, 154 Md. 675 (1928). It appears that

the payment of damages for which a parent may be vicariously liable may not be classified as an exemption within the meaning of Art. III, §38. However, the Commission concluded that any change in these policies should be proposed by the legislature .

Sections 3-841 and 3-842 are derived from the subtitle "minors without proper care and guardianship." They deal with proceedings concerning an adult responsible for the condition of a child and the bond procedure as a security for enforcement of the judgment. The remaining provisions of this subtitle are proposed for repeal as obsolete, inconsistent with the Maryland Rules, or duplicated by provisions of the general juvenile causes law.

Subtitle 9 - Wrongful Death.

In Section 3-901, there are several definitions of the terms which presently appear in Art. 67, §4. The definition of "person" is retained because its deletion might possibly be construed as narrowing the scope of the act. The problem derives from the term "body politic" and the possibility that it was somehow intended to eliminate the doctrine of sovereign immunity. No reason for use of this phrase has been discovered and the one case construing it suggests that the phrase does not abolish sovereign immunity; see State ex rel Watkins v. Rich, 126 Md. 643 (1915). However, it is necessary that the General Assembly examine the problem and make a policy decision on the precise language of the definition. The provision which merely restates the doctrine of respondeat superior is proposed for repeal as unnecessary, since this doctrine is well established and applied in Maryland.

Section 3-904 merely restates in a modified form the provisions which presently appear in Art. 67, §4(b). It should be noted that

this section perpetuates what appears to be a defect in the existing statute. This section applies only to the case of the death of a spouse or a minor child. The death of a parent, especially a widow, widower, or divorced parent who could not be called a spouse is not in terms covered by this section, although one of the elements of damage is stated to be "parental care". The statute also refers to counsel, training, guidance, etc., which are more applicable to the death of a parent than to anything else. However, the Commission is cognizant of the fact that this law was adopted in its present form by Ch. 352, Acts of 1959, and an unsuccessful effort to broaden the language was made in 1968.

The present language is of recent vintage and apparently the result of legislative compromise. Further consideration of this problem by the General Assembly may be desirable.

TITLE 4 - DISTRICT COURT - JURISDICTION.

Title 4 contains jurisdictional matter pertaining to the District Court. While the title involves little or no substantive change, this Report will discuss several policy matters which should be considered by the legislature.

ORGANIZATION OF TITLE

Title 4 contains the following subtitles:

Subtitle 1 - Definitions

Subtitle 2 - Jurisdiction in general

Subtitle 3 - Criminal jurisdiction

Subtitle 4 - Civil jurisdiction

Subtitle 5 - Juvenile jurisdiction - Montgomery County.

SPECIFIC MATTERS

Subtitle 1 - Definitions.

The definition subtitle is new. Please note that Section 4-101(c) defines "criminal case" as including motor vehicle criminal cases. The use of this definition is substantially similar to that of the definition in §12-101(e).

Subtitle 2 - Jurisdiction in general.

This one-section subtitle sets forth the general basis for District Court jurisdiction. It is comparable to §1-501, pertaining to courts of general jurisdiction, but makes it clear that the District Court has only the jurisdiction granted it by law.

Subtitle 3 - Criminal jurisdiction.

This subtitle sets forth the District Court's criminal jurisdiction. Because of the §1-401(c) definition of "criminal case" it applies to traffic or motor vehicle cases as well. Like Subtitle 4, Subtitle 3 begins with a statement of exclusive original jurisdiction (§4-301); then lists exceptions (§4-302); then sets forth certain special jurisdictional provisions (§§4-303 and 4-304).

No changes in existing law are intended. Section 4-303 is the only provision in this subtitle not having a basis in an existing part of Art. 26. This section makes it clear that if a juvenile court waives jurisdiction over a juvenile, and the offense is one normally triable in the District Court, then the District Court has jurisdiction regardless of the age limitations of §4-301. Section 4-303 embodies in statutory form the construction as set forth in the Attorney General's opinion of 10/14/71 (Daily Record, 10/20/71).

A number of provisions of Art. 26 are not included in Subtitle 2. These include Art. 26, §145(b)(5)(ii), which is a venue provision and

is transferred to Art. 27 by Section 7 of the Courts bill.

Other excluded provisions are those granting specific powers to District Court judges. When the District Court Act was first adopted, it was useful to place these matters in Art. 26, because the Act itself was a consolidation of various pre-existing laws applicable to various pre-existing courts. It was, therefore, important to place the new material in one place, and desirable, at the outset, to allocate it with other laws dealing with the District Court.

However, one of the central concepts of the District Court system is that its judges, within jurisdictional limits, have essentially the same powers as other judges. Accordingly, it is now proposed that statutes such as Art. 26, §145(b)(6) (Warrants, Bond, Bail) and (10) (sentencing), and §146 (Suspension of sentence and probation) be codified with Art. 27 provisions on the same subjects; see Sections 6 and 10 of the Courts bill.

Art. 26, §145(b)(8), (Appointment of counsel) is proposed for repeal. It is covered by Art. 27A, §6(f), ^{as amended by Sec. 4 of the bill} and §2-102 of Title 2. Section 145(b)(9), (Alcoholics and Addicts) is proposed for repeal; it is covered by Art. 59, §23, Art. 2C, and Art. 43B, all of which apply to the District Court. Art. 26, §147 is proposed for repeal. It is covered by Maryland District Rule 764. Art. 26, §159 (Juvenile probationary schools) will be transferred to Art. 27; see Section 3 of the Courts bill.

Subtitle 4 - Civil jurisdiction.

The structure of Subtitle 4 parallels that of Subtitle 3. Section 4-401 states the general rule as to exclusive original jurisdiction; Section 4-402 states the exceptions; Section 4-403 states the special provision as to juvenile causes in Montgomery County.

Although no changes in present law are proposed, there are some

matters which require the General Assembly's attention.

Section 4-401(4). On recommendation of the Legislative Council Joint Committee on revision of Article 26, this paragraph deletes the present statutory reference to the civil jurisdiction exercised by the people's courts of Anne Arundel, Baltimore, Montgomery, Prince George's and Wicomico Counties and Baltimore City prior to July 5, 1971 and not otherwise conferred upon the District Court. The provision is regarded as obsolete. The present statute is Art. 26, §145(c)(1).

The Commission and the Legislative Council Joint Committee questioned the precise nature of the jurisdiction preserved by this statute. It is not a very helpful law, since it tells the reader nothing specific.

Section 4-401(5). We call attention to some of the problems arising from Art. 26, §145(c)(1), which gives the District Court jurisdiction "in all actions involving landlord and tenant, distraint, forcible entry and detainer ... regardless of the amount involved." Several problems must be considered.

One relates to the right to jury trial; see §4-402(c) and Art. 26, §145(c)(3)(ii). Is the "regardless of the amount involved" language intended to eliminate the right to a jury trial in a landlord-tenant case? In Faller Management Co., Inc. v. Megyeri, Law No. 36833 (10/10/82), the Circuit Court for Montgomery County (Cahoon, J.) decided not.

But suppose that no damages are claimed? In an action of ejectment in which there was no claim for damages, Judge Clapp has ruled that there is no right to jury trial. This seems to be what the statute provides, despite the fact that the value of the property (or the right of possession of the property) in such a case may be

tremendous.

Did the General Assembly really intend to give the District Court such extensive landlord-tenant jurisdiction? If so, did it intend to eliminate the right to jury trial in the absence of an actual claim for monetary damages exceeding \$500? If so, did it intend that there should be a right to trial de novo on appeal in every such case, in the absence of an actual claim for monetary damages exceeding \$500?

Another point to consider is that extremely critical questions of landlord-tenant law may arise and never be subject to adjudication in the Court of Appeals or Court of Special Appeals if the District Court has exclusive original jurisdiction in all landlord-tenant cases. While this problem exists with respect to other areas of District Court jurisdiction - very critical questions of law may arise in a minor criminal case or a civil case involving less than \$500 - the likelihood of this occurring is lessened by the concurrent jurisdiction and jury trial provisions clearly applicable to the other situations.

The somewhat scanty "legislative history" of this provision is set forth in the Revisor's Note to the section. It is not particularly helpful in finding a solution.

It may be, of course, that the District Court should have exclusive original jurisdiction over all landlord-tenant proceedings subject to whatever constitutional jury trial rights may exist. On the other hand, the general scheme of District Court jurisdiction suggests that the legislature intended to give the circuit court concurrent jurisdiction where relatively substantial amounts were involved, and exclusive jurisdiction if the damages claimed exceeded \$5,000. Such a rule could be applied readily enough in landlord-tenant

cases involving money damages, but it would be more difficult to apply in cases lacking a specific monetary claim.

A number of possible approaches were considered by the Commission, although the Commission members did not think they had the expertise to make a firm recommendation in this regard.

One possibility would be to draw the jurisdictional line between cases involving long term leases with some time yet to run (circuit court) and shorter tenancies such as those from month-to-month (District Court). Another possibility would be to restrict District Court jurisdiction to residential leases, giving the circuit court at least concurrent jurisdiction with respect to commercial leases. Still another would be to limit District Court jurisdiction to those involving claims for possession of premises only, and not money damages, or at least giving the circuit court concurrent jurisdiction in the event of a money damage claim exceeding \$2,500.

The problem of appellate review could be resolved by providing for appeals directly from the District Court to the Court of Special Appeals or for a certification procedure whereby important legal questions could be transferred to one of the appellate courts for decision. However, the Commission believes that the entire question of appeals from the District Court should be a subject for separate consideration, and if the State moves towards a single-tier trial court system, the appeal problem will have to be resolved as part of the adoption of that system. The question requiring consideration now is basically that of allocation of jurisdiction in the landlord-tenant area.

Unfortunately, the Code Revision Commission's requests for guidance from the Landlord-Tenant Commission in this matter have not been answered.

While §4-401 outlines the exclusive original civil jurisdiction of the District Court, §4-402 contains exceptions to that jurisdiction. Subsection (a) of §4-402 strictly limits the equity jurisdiction of the District Court to petitions for injunctions in certain replevin and distress actions.

Section 4-402(b) prohibits the District Court from deciding questions of title to real property as does the present law. The Commission submits to the legislature the question of whether there should be an exception to this rule with respect to the grantee suit jurisdiction conferred by §4-401(5). For procedure in grantee suits, see Art. 21, §14-109.

It should be noted that Ch. 880, Acts of 1973 (H.B. 1563) gave the District Court exclusive jurisdiction over replevin actions, regardless of the value of the thing to be recovered. Section 4-402(e), like Ch. 880, contains an exception to this rule where a party demands a jury trial.

Section 4-402(e). The jury trial provision is slightly reworded. The present statute speaks of a demand for jury trial "within such time as prescribed by rule." The Commission has inserted a specific reference to the Maryland District Rules, which in fact govern the situation; see M.D. R. 343. As the subsection is written, a rule in this area would have to be one adopted by the Court of Appeals as opposed to one adopted by the chief judge of the District Court. The Commission felt that this was probably the legislative intent.

Subtitle 5 - Juvenile causes in Montgomery County.

The general laws dealing with juvenile causes appear in Title 3 of the Courts Article. The Commission studied the possibility of attempting a consolidation of these provisions and the special provisions pertaining to Montgomery County but concluded that this would not be feasible. Consequently, the decision was made to place

the Montgomery County laws in Subtitle 5 of Title 4. Except for minor rearrangements in style, the statutes dealing with juvenile causes in Montgomery County remain essentially unchanged. The Revisor's Notes explain the few modifications proposed by the Commission.

Special attention is called to the proposed repeal of Art. 26, §145(f). This provision, dealing with removal, has been superseded by M.D.Rs. 542 and 738. The statutes and the rule are in complete conflict and it is confusing to have both of them on the books. At the 1972 session, SB 531 and HB 246 were introduced for the purpose of superseding the rule. Neither passed. In view of this legislative history, it is suggested by the Commission that Art. 26, §145(f) now be repealed.

TITLE 5 - PROHIBITED ACTIONS AND LIMITATIONS

Title 5 deals with prohibited actions and limitations. The material revised comes almost exclusively from Articles 57 and 75C.

ORGANIZATION OF TITLE

Title 5 contains the following subtitles:

Subtitle 1 - Limitations.

Subtitle 2 - Computing time.

Subtitle 3 - Prohibited actions.

SPECIFIC MATTERS

Subtitle 1 - Limitations.

Subtitle 1 details the periods of time in which an action may be brought. Section 5-101, as revised, is a blanket three year limitation covering all civil causes of action for which no other limitation is specifically provided. This was done on the recommendation of the of the Commission's Subcommittee on Courts, which felt that such a

revision would avoid confusion and was therefore a justifiable substantive change. Many of the types of action listed in the present statute are either obsolete or obscure. The action of account refers to an ancient legal action, never widely used in this country, to which ancient forms of pleadings and procedure (including wager of law) applied. It was felt that many lawyers may not be aware of the distinctions inherent in the ancient forms of action such as between trespass, case, and assumpsit. There is some doubt as to which of the eight writs of habeas corpus this section applied. It is possible that in enacting some modern statutory causes of action which do not fit within the old forms of action, the legislature may have neglected to provide specific statutes of limitation. In light of the above, it was felt that a general three year provision, with exceptions for actions not falling within the three year period, would be an improvement. There is no intention to affect the notice requirements or other provisions dealing with the time within which a suit must be brought such as the three year limitation in wrongful death cases.

Some of the statutes of limitation in the present code provide that an action, unless filed within the period of limitation, is "barred". Technically this is not true since the statute of limitations may be waived. Therefore, "be barred" provisions have been deleted throughout the revision. The revision provides that the action shall be filed within the limitations period and it is believed that this incorporates the "barred" provision by implication.

Section 5-102 retains the forms of action (specialties) in order to avoid making substantive changes. The legislature may wish to consider whether there is any valid reason for having a longer limitations period simply because an instrument is executed under

seal. In any case, the longer period should be retained for judgments or recognizances.

The provision relating to sheriffs' and constables' bonds has been broadened to except all public officers' bonds from the 12 year period. They are covered under §5-104, Public Officers' Bonds. Article 57, §6, on its face, applies to only the bonds of sheriffs, coroners, and constables, giving rise to speculation whether the bonds of other officers are subject to the 12 year limitation period of §5-102. The Commission believes that when this section was enacted in 1729, the legislature intended to cover all officers who were then required to post bond. This position is supported by the fact that clerks were not required to post bond until 1742. No specific statute of limitations is provided for clerks' bonds. Of the officers enumerated in this section, only sheriffs still exist in their original capacity. Although the office of coroner is still provided for in the Constitution, there are presently no coroners actually serving. While constables are the process servers for the District Court, they are similar in name only to the constables of the 18th century whose duties included substantially more than merely serving process. In addition, many new types of officers have been established since 1729 who are required to post bonds. In light of these considerations, a provision covering all officers was deemed advisable.

Section 5-108, derived from Art. 57, §20, prohibits bringing an action against a builder for damages caused by a defect in an improvement to realty if the injury occurs more than 20 years after completion of the improvement. As discussed in the revisor's note, it is unclear whether this grant of immunity is a prohibited action, a statute of limitation, or something else.

Statutes of limitation generally prescribe the time within which an action shall be brought. This section deals with the time within which an injury must occur to be actionable.

The section is unclear in many respects and should be studied by the legislature.

Subtitle 2 - Computing time.

Subtitle 2 contains factors which must be taken into account in computing the time limited by Subtitle 1.

Section 5-201 extends the statute of limitations when plaintiff was under a disability when his cause of action accrued. The section shortens the present extension period (from ten years to three in cases involving adverse possession of real property). This change was made at the suggestion of the Commission's Subcommittee on Courts, which felt that the present statutory period was unreasonably long and should be shortened.

Presently, the extensions contained in Art. 57, §§2, 3, 4, and 6 provide that when his disability is removed the plaintiff has the period provided by the applicable statute of limitations, if five years or less, or if longer than five years, half the period within which to file a suit. Shortening this extension period to a flat three years is a substantive change. To avoid possible injustice, this section will apply only prospectively; see Section 21(c) of the Courts bill.

Subsection (c) (Art. 57, §7) is included here to make clear that there is no legislative intention to resurrect the common law disabilities of coverture, absence, and imprisonment of the plaintiff.

Section 5-203 extends the limitations period if a party is kept in ignorance of a cause of action by the fraud of an adverse party. A recent case, Leonhart v. Atkinson, 265 Md. 219 (1972) establishes

the following criteria, which must be affirmatively pleaded by the plaintiff to call this section into play: (1) That the adverse party kept the plaintiff in ignorance of the fact that he had a cause of action; (2) How the plaintiff discovered the fraud; (3) Why the plaintiff did not discover it sooner; and (4) What diligence the plaintiff exercised to discover it.

Subtitle 3 - Prohibited Actions.

This subtitle basically deals with common law causes of action which are prohibited or limited by statute. The distinction between a "prohibited action" and a "limitation" is at best unclear. However, as an operational definition, if a statute provides that given facts are not actionable, it is treated as prohibitive. If the statute deals with the time for bringing the action, assuming actionable facts, it is considered a limitation.

Section 5-301 is synthesis of Art. 75C, §§1 - 9 abolishing actions for breach of promise to marry and alienation of affections. These overlapping sections are the result of "legislative overkill" in 1945. Many of them could be repealed, but deleting them might be construed as indicating a legislative intention to relax the prohibition as to these actions. Section 5-101 contains all the viable provisions dealing with breach of promise to marry and alienation of affections.

The section, as drafted, makes it clear that a cause of action accrues only in favor of a woman. Presently the statute exempts any case wherein "pregnancy is involved", but it is believed that the legislature never intended to do more than preserve a right of action in favor of a pregnant woman.

Subsection (b) makes contracts for settlement of a prohibited action void but contains the exception provided by the present statute for holders in due course of negotiable instruments. The exception

is necessary since Art. 95B, §3-305(2)(c) provides that a holder in due course of a negotiable instrument does not take the instrument free from a defense of underlying illegality.

The Commission proposes repeal of Art. 57, §16. The section presently extends the period of limitations when a party's judgment is reversed by the Supreme Court. It was enacted in 1918, apparently as an attempt to correct a situation resulting from the decision in Baltimore & Ohio R.R. v. Branson, 131 Md. 686 (1917). The section is so narrowly drawn that it is all but inapplicable in other cases.

The legislature may wish to deal with a serious problem which arises when a party mistakenly brings suit in a federal court, and the defendant apparently waives jurisdictional objections. After the statute of limitations has run, such a defendant may move to dismiss or vacate the judgment on jurisdictional grounds because the parties cannot confer jurisdiction on a federal court - only Congress may do that. Knee v. Chemical Leamon Tank Lines, 293 Fed. Supp. (ED. Pa) 1094 (1968). Generally, filing a suit does not toll the statute of limitations and a party whose suit is dismissed for lack of jurisdiction is usually out of luck.

However, since a state may regulate procedures in its courts, it may prescribe conditions which extend the statute of limitations.

Sections 15, 17 and 18 remain in Art. 57. They are neither covered by the Courts Article nor transferred to some other article. These sections will eventually be included in the Local Government Article; however, until that article is drafted, no appropriate allocation of them can be made without enacting duplicating sections in the several articles dealing with county governments.

TITLE 6 - JURISDICTION, VENUE, PROCESS, AND PRACTICE

Title 6 deals with personal jurisdiction, venue, process and practice. Although considerably changed in form and organization, the draft contains few substantive changes when contrasted with the present law.

ORGANIZATION OF TITLE

Title 6 contains the following subtitles:

Subtitle 1 - Bases of jurisdiction

Subtitle 2 - Venue

Subtitle 3 - Process

Subtitle 4 - Practice

SPECIFIC MATTERS

Subtitle 1 - Bases of jurisdiction .

This subtitle deals with the bases upon which a court may exercise jurisdiction over a person, as opposed to jurisdiction over a cause of action. The latter is dealt with in Titles 3 and 4. The subtitle is based primarily on the Long Arm Statute, with several provisions derived from sections of Articles 16 and 96.

Section 6-101 is an attempt to simplify the chaos of Art. 96 with respect to the jurisdiction of courts of this State over federal lands. Presently, many sections in Art. 96 are phrased as retentions of jurisdiction over acts occurring on specific federal lands, or in terms of the power of the State to execute process on such lands, while a few sections such as §47 are blanket provisions covering all federal land and retaining jurisdiction to the fullest extent consistent with federal law and the Constitution. Section 6-101 is based on the blanket provisions, and is cast in the form of a definition to avoid repetition in each subtitle. Subsection (d) contains a statement of legislative intent, and subsection (e) provides for termination of

federal jurisdiction when the federal government ceases to use the land. It is believed that §6-101 incorporates the intent of the specific retention sections, while doing so in a more comprehensive way than the present law.

As many of the sections in Art. 96 specifically provide for criminal jurisdiction over acts committed on land used for highway purposes, a similar provision will be inserted in the Criminal Law Article. Other provisions in Art. 96 are phrased in terms of consent to acquisition of land by the federal government.

Because Art. 96 contains provisions relating to matters other than jurisdiction of Maryland courts, and because these provisions are not incorporated in the Courts Article, none of the sections in Art. 96 are proposed for repeal at this time.

Art. 16, §§23 and 69, which define persons living on federal reservations as residents of the State and county for purposes of adoption and divorce, are embodied in this section and are proposed for repeal.

Subtitle 2 - Venue.

Subtitle 2 contains the revised material dealing with venue. The draft attempts to minimize the distinction between local and transitory causes of action to the fullest extent possible. Venue is treated pragmatically with §6-201 stating the general rule that a defendant should, when possible, be tried in a county which is convenient for him - i.e., where he lives or works. If present law allows an alternative venue as it does in certain cases, the additional venue is set out in §6-202. It should be noted that a plaintiff may choose a venue from either section, and that §6-201 is not controlling if an alternative venue is provided. Some of the

actions are covered in §6-201 and §6-202 are transitory and some are local.

Section 6-203 contains venues for actions to which the general rule does not apply. While some of these are local actions, most are transitory but are statutory exceptions to the general rule. If an action is listed in §6-203, that section controls the venue, unless §6-202 provides an additional venue. If an alternative venue is provided, the plaintiff may elect either one.

The venue provisions of Title 6 are, if anything, slightly broader than the provisions of the present law. For example, where a section provided that in certain cases an action may be brought where the defendant lives, it has been superseded. Section 6-201 allows the action to be brought where the defendant works as well as where he lives. With the advent of the automobile and the resulting increase in mobility the change is of minor significance and should cause no inconvenience.

Subtitle 3 - Process.

Subtitle 3 authorizes and regulates service of process. Material dealing with the mechanics of service is generally contained in Subtitle 3 of Title 2, Sheriffs, or in the rules.

The underlying philosophy of this subtitle is that service of process should, when possible, be dealt with by rule. Service of process within the state is no longer a primary basis for the exercise of personal jurisdiction by the courts of this state. Today, personal jurisdiction over non-residents is generally based on the long-arm statute and service of process, while essential to personal jurisdiction, unless waived, need not be made within the State. Therefore, §6-301 simply authorizes service of process to be made in accordance with the rules, while §6-304 authorizes service outside the State. This approach

eliminates the need for substitute service of process on the Secretary of State.

Creatures of the pre-long-arm statute era, Art. 66 1/2, §9-301 and Art. 75, §§76, 77, and 78 provide for service of process on the Secretary, but impose no duty on the Secretary to notify the defendant, that being the duty of the plaintiff. Originally, in order for a court to have jurisdiction over a non-resident, it was constitutionally permissible that the non-resident, by doing certain acts, be deemed to appoint some person within the state as agent to accept service on his behalf. Since International Shoe v. Washington 326 U.S. 310, (1945), jurisdiction may be based on the doing of the acts specified but only if the defendant receives actual notice of the suit and has an opportunity to defend.

Because of this, there is no reason to serve process on the Secretary of State as fictional agent, and these sections are proposed for repeal as obsolete. In the case of corporations, however, the service on the State Department of Assessments and Taxation is retained. Section 6-307 imposes a duty on the department to notify the defendant when served, and is therefore constitutionally sufficient. In addition, since many corporations have resident agents who file their addresses with the department, and since the department generally has up to date information regarding the addresses of corporations, it is felt that it is appropriate to have the Department notify the defendant. Section 6-307 only imposes a duty on the Department to notify the defendant, the other aspects being covered by Rule 106.

In addition to the sections covered by the Courts Article, there are other provisions in the Code authorizing service on the Secretary of State, the Securities Commissioner, the Real Estate Commissioner, and the Insurance Commissioner. The legislature is urged to consider

whether these fictional appointments are necessary as a policy matter, and whether it is possible to have just one state official on whom process may be served as a last resort, if service under the rules cannot be made.

Consider the quandry of a plaintiff who has purchased a condominium - (a security) from a non-resident realtor who also sells insurance, and whose company is incorporated, but has no resident agent in this state. Which state official should he serve?

Subtitle 4 - Practice.

This subtitle contains a hodgepodge of miscellaneous sections which cannot properly be allocated elsewhere. They deal with practice, pleading, and similar matters.

Attention is called to §6-401, dealing with abatement of actions. This section is derived from Art. 75, §15A and §15B. These sections were revised in 1963, apparently following a revision of the Rules. Section 15A provides that a "personal action" does not abate by reason of the death of either the plaintiff or defendant, while §15B provides that an action to recover for certain personal injuries does not abate by reason of the death of the plaintiff.

While abatement of an action is generally considered procedural, whether or not an action survives is generally regarded as substantive. Therefore, although Rule 220 covers abatement of actions, this section is phrased in terms of survival to provide a base for the rule.

The commission recommends that §6-405 dealing with settlement of suits brought on behalf of infants, be referred to the legislature for clarification.

Presently both this section and Art.93A, §§401 and 408 provide procedures for approval of tort recoveries for the benefit of minors, however, the Art.93A provisions apply only where the recovery is more

than \$2,000. It is unclear whether the Art. 93A provisions include the power to approve settlement of a suit.

A further problem exists under §6-405 in that it is not clear whether a suit can be settled by a next friend if the child's parents are alive, but unavailable to approve the settlement.

A substantive change was made in the section, allowing the court in which the suit is brought to approve the settlement. This is believed wise, since that court, rather than the Orphans' Court, would be most familiar with the facts and circumstances surrounding the settlement.

TITLE 7 - COSTS

This title contains provisions which presently appear in Articles 5, 17, 24, 36, 81 and 87. They all relate to costs in judicial proceedings and except for miscellaneous provisions are basically grouped by courts in which the costs accrue.

ORGANIZATION OF TITLE

Title 7 contains the following subtitles:

- Subtitle 1 - Court of Appeals and Court of Special Appeals
- Subtitle 2 - Circuit Court
- Subtitle 3 - District Court
- Subtitle 4 - Miscellaneous.

SPECIFIC MATTERS

Subtitle 1 - Court of Appeals/Court of Special Appeals.

This subtitle deals with costs in judicial proceedings in the Court of Appeals and the Court of Special Appeals.

Section 7-101 is a definition section. It is introduced to avoid repetition of the same provisions which define "costs" in subsequent sections of this subtitle.

Section 7-102, dealing with fees of the Court of Appeals and the Court of Special Appeals, is derived from Art. 36, §14. It does not contain any change in form or substance except for the provisions dealing with fees for copies of laws supplied by the clerk of the Court of Appeals. They have been modified to comply with the actual practice: the clerk in fact charges, for copies of laws, 20 cents per page, not 12 1/2 cents per 100 words.

Section 7-103 deals with costs relating to appeals in criminal cases when the defendant is indigent. Subsection (a) of this section deals with procedures to ascertain indigency in capital cases, and is derived from Art. 5, §15. It should be noted that in all proceedings to ascertain a defendant's indigency, a judge has power to exercise his discretion except in capital cases. It is apparently the expression of legislative intent to treat capital cases differently from all other criminal cases.

In subsection (c), the provisions dealing with costs of filing a petition for writ of certiorari have been modified to permit the court in which the petition is filed to make ^{the} determination of indigency. At present, Sec. 15B of Art. 5 requires action by two courts for an indigent; i.e. determination of indigency in the Court of Special Appeals and decision on petition ^{for certiorari} in the Court of Appeals. The Commission thinks that the payment of costs should be considered by the same tribunal which entertains a petition for writ of certiorari. This is logical since there is no particular reason why the Court of Special Appeals is able to make this determination more readily than the Court of Appeals.

In addition, the last provision in subsection (c) has been modified to fill an apparent gap which exists in the present statute.

It is unclear from the present statute who would pay the costs of filing the petition for writ of certiorari if the petition for waiver of costs is granted and the petition for writ of certiorari is denied. The draft clarifies this ambiguity by providing for payment of costs by the State irrespective of the Court's decision on the writ of certiorari, provided, of course, that the petitioner has been found indigent.

Section 7-104 contains provisions similar to Maryland Rules 882.f and 1082.f. However, the Commission believes that it is a good policy to retain in statutory form provisions requiring payment of money by the State or its agencies or subdivisions. Moreover, this statute is broader than the rules cited since the rules apply only to the Court of Appeals and the Court of Special Appeals, whereas the statute applies to any court acting in an appellate capacity.

The provision listing courts exercising appellate jurisdiction is proposed for deletion as unnecessary. These provisions are covered by Title 12 of the Courts Article.

Subtitle 2 - Circuit Court.

This subtitle deals with court costs in a circuit court.

Sections 7-201 and 7-202 are derived from Art. 17, §30, Art. 24, §§10 and 11, and Art. 36, §§12(a) and (b), as amended by Ch. 532, Acts of 1973. Appeals from decisions of administrative agencies are excepted from the general rule consistent with the court's decision in Glenville v. David Hairstylist, 249 Md. 162 (1967). The court stated in that case that based on its examination of several general and local laws upon which Art. 24, §10 was based, the legislature never intended to require prepayment of costs on appeal to courts of law from the decision of any administrative agency. The Commission

thinks that the court's interpretation is still binding in view of the fact that except for the provisions dealing with the District Court, all provisions of Art. 24, §10 are incorporated in Art. 36, §§12(a) and (b) without any major substantive changes affecting these provisions.

An exception as to appeals from the District Court judgments reflects the most recent change made by the legislature; see Ch. 532, Acts of 1973.

It should be noted that Art. 36, §12(a)(2) as adopted in 1973 is ambiguous and could lead to different interpretations. The first sentence which appears to be a catchline reads as follows: "Advance filing fee required on appeals to the common-law courts of Baltimore City, or the circuit courts of the several counties from Workman's Compensation Commission." This text is similar to the provisions of Art. 24, §10(c) which was repealed by Ch. 532, Acts of 1973. However, the next sentence excepts from the prepayment of costs "appeals to the common-law courts of Baltimore City for review of any decision of the Workman's Compensation Commission, and in appeals from judgments rendered by the District Court."

While the first sentence refers only to an exception concerning advance filing fees on appeals to the common-law courts of Baltimore City, the sentence following it excepts all appeals rendered by the District Court and filed in any court having appellate jurisdiction over District Court judgments. This apparent inconsistency between the first and second sentence of paragraph (2) is eliminated in the present draft. The Commission is of the opinion that the first sentence is in fact a catchline, and because of its brevity does not reflect all provisions in this paragraph, or that it is worded inappropriately. The second sentence, which appears to be the only

provision in paragraph (2) is much clearer. It states, inter alia, that it applies to all judgments rendered by the District Court.

The provisions of Art. 36, §12(c) and (d) are proposed by the Commission for allocation to the Property Article and the non-courts portion of Art. 17, respectively.

In Section 7-202(b)(7), the provision dealing with the recording of a final decree of divorce is derived from Art. 17, §34. Other provisions of that section are allocated to the Family Law Article, but for the present will be retained in Art. 17.

In §7-202(b)(9), the provision dealing with docket entries is derived from Art. 17, §5. Other provisions of this section are allocated to Art. 47. The Commission also proposes for deletion the perjury provision because it is covered by Art. 27, §435.

Section 7-204, which deals with appearance fees, is derived from Art. 36, §§10 and 10A, as amended by Chs. 52 and 179, Acts of 1973. In this section, the provision dealing with fees in the orphans' courts has been moved to Art. 93 because this title does not deal with the orphans' court. The Commission suggests that the legislature consider enactment of an uniform provision which would provide that all appearance fees are to be distributed to the bar libraries. This would, to a considerable degree, alleviate the problems which plague many bar libraries today.

Subtitle 3 - District Court.

Subtitle 3 contains provisions which deal with court costs in the District Court and the collection and distribution of fines, costs, penalties, and forfeitures. It is derived from Art. 26, §§150A and 155 and contains only changes in style.

Subtitle 4 - Miscellaneous.

Subtitle 4 contains miscellaneous provisions which presently

appear in Art. 36, §§25A, 25B, 26, 26A, 26B, 26C, 26D, and 28, as amended by Ch. 48, Acts of 1973. They deal with supplementary proceedings and sheriffs' fees in civil cases.

Section 7-402, which provides for sheriffs' fees in civil cases, is presented in tabular form for the purpose of clarity. It is apparent that this section reflects a great variety of fees for performance of the same acts in different counties. As in all other similar cases where fee schedules vary from county to county, it would be desirable to have the legislature consider enactment of a uniform state-wide schedule in spite of the complexity of the issues involved.

TITLE 8 - JURIES

Title 8 of the Courts Article deals principally with jury selection. The revision is based almost exclusively on present Art. 51, which was recently re-enacted in 1969 pursuant to an extensive study by the Maryland Bar Association. Because the statute was recently adopted, changes are generally in style only, although many sections of the present article are divided into shorter revised sections, and a few are completely rewritten.

ORGANIZATION OF TITLE

Title 8 contains the following subtitles:

Subtitle 1 - General Provisions

Subtitle 2 - Juror Selection

Subtitle 3 - Petit Juries

Subtitle 4 - Penalties.

SPECIFIC MATTERS

Subtitle 1 - General Provisions.

The definition of "Circuit Court of a County" is included in Subtitle 1 to avoid repetitious references to the Supreme Bench of Baltimore City when referring to the management of the juror selection process. It is the Supreme Bench, qua Supreme Bench, and not any one constituent part that manages juror selection in Baltimore. At no time does the statute provide different treatment for the Supreme Bench.

A definition of "Court" is added to authorize the judge of any court in which a jury trial is being held to perform the functions required of him in the conduct of a jury trial.

No definition of "County" as including Baltimore City is necessary, since Art. 1, §14 defines county as including Baltimore City. Draftsmen in this State have long sought to avoid repetitious specific references to Baltimore City when drafting State-wide legislation. The Commission decided that since Art. 1, §14 exists, it should be relied upon.

Section 8-106 combines the compensation provisions appearing in §§12 and 19 of Art. 51, and in the public local laws of several counties. These provisions have been arranged by county to allow for easy amendment. Consideration was given to arranging these provisions by judicial circuit, however the idea was abandoned. Often different counties in the same circuit have different compensation provisions.

This section sets forth the "actual practice" regarding juror compensation, and includes all public local law provisions in this area which are still followed, to the extent these could be determined. Other public local laws dealing with juror compensation should be repealed; see discussion of the problem of public local laws below.

Jurors in the seventh circuit receive "expense money" in lieu of "compensation". This is apparently intended to circumvent federal regulations which require a federal employee to pay over to the government all "compensation" received from outside sources. The regulation apparently exempts reimbursement for "expenses". Other counties may wish to follow suit.

Subtitle 2 - Juror Selection.

Subtitle 2 divides Art. 51, §4 into separate new sections, §8-201 through §8-204.

Section 8-201 is presently subsection (a) of Art. 51, §4. It is the operative section, requiring each county to have a plan for random jury selection. Since all counties currently have plans in operation, the duty to "devise" a plan has been changed to a duty to "maintain" it in operation. Section 8-202 spells out the matters to be covered by the plan.

All juror selection plans are quite similar, each specifying in detail the person who manages the selection process, the specific procedures for selection, the mechanics of mailing qualification forms to prospective jurors, the time when the master wheel is refilled, the time for drawing the panels, the length of prospective jurors' liability for service, and designations of the grand jury foreman. These plans all were apparently derived from, and strictly adhere to, a model recommended by the Court of Appeals, which in turn is based on the jury selection plans of the federal courts. Variations in the plans for different counties are almost negligible, the greatest difference being whether the county selects its jury panels manually or by computer.

The other sections in this subtitle relate to the procedures for implementing and operating the plan.

Subtitle 3 - Petit Juries.

Subtitle 3 deals with the procedures for selecting a particular petit jury from a panel and statutory provisions governing the conduct of a jury trial. It should be noted that most of these matters are dealt with by the Maryland Rules, and not by statute.

Subtitle 4 - Penalties.

Subtitle 4 provides penalties for violation of the provisions of the Title.

Gaps in the present law.

There are no statutory provisions concerning the swearing in of either grand or petit jurors, or the requirement that grand jury proceedings be conducted in secrecy. The Commission believes that jurors' oaths derive from the common law of England, as do most of the provisions governing grand juries.

None of the powers of the grand jury are included in this Title. Former §20 was transferred to Art. 27 by Ch. 841, Acts of 1973.

Public Local Laws.

There are a number of inconsistent public local laws dealing with juror selection which the Commission believes obsolete and ^{express} appropriate for repeal. These provisions either conflict with or duplicate Art. 51, the Maryland Rules, or the Juror Selection Plans. A table of these sections is attached.

The sections which conflict were originally enacted in the 1890's in response to Art. 51 of the Code of 1888, and have continued in effect, largely without amendment or revision, until the present. These sections typically provide that jurors are selected from a list of male taxables at least 25 years old, and shall be apportioned among

the election districts of the county. Most of these public local laws also provide that jurors "shall be selected with special reference to their intelligence, sobriety and integrity." These statutes clearly violate the policy of random selection behind the present Art. 51, as well as specific provisions of the article and the juror selection plans.

Those provisions which merely duplicate provisions of Art. 51 (Title 8) should be repealed to avoid confusion which undoubtedly will arise in the future if Art. 51 (Title 8) is amended without also amending the public local laws. The statutory cross-references in many of the public local laws still refer to sections of the 1888 Code.

An example of this confusion can be found in the area of juror compensation. In Garrett County, for instance, the public local laws provide that jurors receive \$3.50 per day compensation and 12 1/2 cents per mile, for traveling to and from court once each term; Art. 51 provides \$10 per day and 10 cents per mile. The Garrett County Code provides that when its provisions and those in Art. 51 conflict, the local law controls. Garrett County actually follows Art. 51 exclusively, as do most counties.

In Frederick County, however, the local law provides \$15 per day and mileage as set by the county commissioners. Frederick County apparently follows both the general and local laws in part, paying jurors \$15 per day and 7 1/2 cents per mile.

In Kent and Queen Anne's Counties, jurors are paid the compensation provided in Art. 51, plus the mileage allowance and overtime pay provided in the local laws.

Article 1, §13 provides that when public local and public general laws conflict, the public local laws prevail unless the language of the general law indicates either expressly or by necessary

implication a purpose to reveal inconsistent local laws. Repeals by implication are not favored, and local laws are not repealed by general laws unless such a legislative intent is clearly indicated.

In the area of juries, this problem is of minimal significance since Ch. 408, Acts of 1969, §4, clearly expresses a legislative intent to repeal "all other acts or parts of acts including portions of the several codes of public local laws" to the extent of any inconsistency. It would, nevertheless, be wise to specifically repeal these local sections to avoid any possible doubt as to their status. Of course, those sections which duplicate Art. 51 were not repealed by Ch. 408.

In the table, sections of the revised juries article and of the juror selection plans are listed in the columns headed "superseded". Many of the local sections are actually superseded by several sections of both the statute and the plans. When this occurs, one or more of these sections are listed.

The statutes dealing with jury terms of court have generally been superseded by the rules of the circuit courts.

Although the problem of obsolete public local laws is discussed here in relation to juries, this does not mean that the problem is not significant in other areas. There are many public local laws which are inconsistent with Title 2, dealing with court employees, and a significant amount of obsolete material relating to justices of the peace or trial magistrates still exists. The counties are urged to study all aspects of their Codes of Public Local Laws with a view to updating them.

TITLE 9 - WITNESSES.

Title 9 deals with competence, compellability, and privilege of witnesses and their attendance and pay. It also deals with out-of-State witnesses and foreign depositions. Almost all provisions of this title are derived from Art. 35 of the Code. In addition, new language is added in some sections to cover apparent gaps and obsolete provisions are proposed for repeal as stated in the General Revisor's Notes.

ORGANIZATION OF TITLE

Title 9 contains the following subtitles:

Subtitle 1 - Competence, Compellability, and Privilege

Subtitle 2 - Attendance and Pay

Subtitle 3 - Attendance of Witnesses from Without of State

Subtitle 4 - Foreign Depositions.

SPECIFIC MATTERS

Subtitle 1 - Competence, compellability, and privilege.

This subtitle reflects a departure from the style that prevailed in Art. 35 concerning the general competence of a witness. The pertinent parts of Art. 35, §§1, 2, 3, 4, 13A, 13B, and 13C have been rewritten in order to simplify the style and to establish a simpler format for setting out various provisions qualifying a witness, and the privileges to which he may be entitled.

In addition, the provisions of Art. 51, §14, Art. 75, §14, and Art. 75A, §21 are included in this subtitle.

The provisions of §§9-102 and 9-103 are new. They deal

with qualifications which have not previously appeared in the Code but which have deep roots in judicial interpretation and are complementary to Sec. 9-101 (Competency of a witness in general); see Sun Cab v. Carter, 14 Md. App. 395 (1972) and Jones v. State, 11 Md. App. 468 (1971).

Sec. 9-106, which deals with a spouse of a person charged with crime as a witness, has been modified stylistically, and includes the latest legislative changes; see Ch. 835, Acts of 1973.

Sec. 9-109 deals with the attorney-client privilege. This language is new. It states the common-law principle that has been long established in Maryland; see Morris v. State, 4 Md. App. 252 (1964); Bris Realty v. Phoenix, 238 Md. 84 (1965).

The privilege conferred by this principle may be waived by the client if he so chooses. The cases do not look with particular favor upon a lawyer testifying for his client, but do recognize that this may be done when there is a waiver. The question of whether an employee of the attorney could testify would depend upon the nature of the testimony that the employee was called to produce. If it related to the client's privilege, it would not be acceptable under this section unless waived. For logical reasons, it appears here as a proper directive.

Sec. 9-116 is the Dead Man's Statute, which has been construed by the Court of Appeals on many occasions. The division of this section into subsections does not change the meaning of the statute but assists in easier interpretation and understanding.

Subtitle 2 - Attendance and Pay.

Sec. 9-201, dealing with summons for the attendance of a party, witness, or for production of evidence and penalty for failure to testify is derived from Art. 26, Sec. 148(a) (applicable to the District Court) and Art. 35, Sec. 14 (applicable to any other court).

The penalty provision which appears in the draft as subsection (b) is modelled after §148(a) and made applicable to all courts. This avoids an apparent illogical discrepancy in the present law. Section 14 of Art. 35, which was enacted in its present form before 1860, provides that the penalty for failure of a witness to appear to testify in a circuit court when summoned is \$50, while Sec. 148(a) of Art. 26 provides that the penalty for the same failure in the District Court is \$300. The Commission decided to make this penalty provision uniform, and modelled it after Sec. 148(a) which reflects the most recent expression of legislative intent.

Section 9-202, dealing with compensation of witnesses, contains provisions presently appearing in Article 35, §§18 and 20. They have been modified to reflect some degree of uniformity, but no substantive changes have been made. It is believed, however, that the varying provisions of this section and the monetary allowances are in many respects irrational and frequently obsolete. The Commission decided not to propose a more uniform and rational scheme without first presenting the problem to the General Assembly. It is suggested that the General Assembly consider enactment of a uniform and up-to-date compensation scheme as a substitute for these provisions.

Subtitle 3 - Attendance of witnesses from without the State.

This subtitle incorporates all provisions of the Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Proceedings.

No changes in language or style have been made which would affect the uniformity of the Act.

Subtitle 4 - Foreign Depositions.

This subtitle is the Uniform Foreign Deposition Act. The Act provides that the state in which the testimony by deposition or otherwise is taken for the use in another state shall apply the same process and proceeding as in any other pending "local" case in that State.

Only stylistic changes are made.

TITLE 10 - EVIDENCE.

Title 10 contains evidentiary provisions which presently appear in Art. 35.

ORGANIZATION OF TITLE

Title 10 contains the following subtitles:

- Subtitle 1 - Proof of accounts and records.
- Subtitle 2 - Public statutes, office copies, etc.
- Subtitle 3 - Motor vehicle laws
- Subtitle 4 - Wire tapping
- Subtitle 5 - Foreign laws
- Subtitle 6 - Foreign debt
- Subtitle 7 - Foreign judgments
- Subtitle 8 - Simultaneous death
- Subtitle 9 - Miscellaneous rules

SPECIFIC MATTERS

Subtitle 1 - Proof of accounts and records.

This subtitle has only two sections. Section 10-101 relates to written records and is derived from Art. 35, §59. All references to photographic reproduction which are applicable to the first three subsections and are specifically mentioned have been removed because these provisions are contained in the Uniform Photographic Copies of Business and Public Records of Evidence Act, which follows the section.

The provisions are arranged in four subsections, each dealing with a separate subject matter.

Section 10-102 is the above-mentioned Uniform Act which is derived from Art. 35, §60. The Act has been adopted in 38 states, including the Virgin Islands. Because of the common practice of micro-filming and its growth in modern business practices, this act is intended as a companion act to the Uniform Business Records as Evidence Act. The draft reflects very few stylistic changes.

Subtitle 2 - Public statutes, office copies, etc.

Section 10-201 provides that replacement volumes to the Annotated Code of the Public General Laws of Maryland and pocket parts or other supplements to the volumes shall be considered as evidence of the law in any court in this State. Subsection (a) is derived from Ch. 23, Acts of 1957 and is placed here for completeness. The balance of the section presently appears as Art. 1, §19. It has been removed from Art. 1 and placed in this section as a logical part of the subject matter of this subtitle.

Only stylistic changes have been made.

Section 10-202 is the Uniform Proof of Statutes Act. The Act provides that books or pamphlets purporting on their face to be the session laws or other statutes and printed by official publishers, or commonly recognized in one jurisdiction are to be received in Maryland as prima facie evidence of these statutes. In this section there are only stylistic changes.

Section 10-203 incorporates all provisions which presently appear in Art. 35, §§61, 65, 66, and 66A. The procedure for producing evidence has been broadened to cover all governmental activities. This does not materially change substantive law because all laws, ordinances, regulations, and resolutions may be proved in this fashion. The

revision of these sections merely combines the procedure which presently controls all agencies and places the statutory authority in one section.

Section 10-204 is drafted to cover all provisions which presently appear in Art. 35, §§67 through 82 and Chapter 708, Acts of 1973. This rather exemplary revision avoids repetition of many similar provisions in these sections without changing the substance. It uniformly applies to ^{the} production of evidence of any public record, book, paper, or procedure of any governmental agency on a State or local level.

Chapter 708, Acts of 1973, added the records of the State Administrative Board of Election Laws to the list of agencies whose records may be introduced in this manner. Because of the way §10-204 is drafted, it is not necessary to make a specific reference to this chapter or its contents in order to incorporate its provisions in this section.

Subtitle 3 - Motor vehicle laws.

This subtitle combines all provisions which presently appear in Art. 35, §§91 and 100. It should be noted that §100 has been subject to a great many amendments during its brief history.

Section 10-201 deals with a test made by use of radio-microwaves in recording the speed of a motor vehicle and its introduction in evidence. It eliminates the requirement of notifying the motorist by highway markings of the presence of radio-micro devices. This is consistent with Ch. 786, Acts of 1973.

Other sections of this draft are not affected by the 1973 legislation and merely restate the present law. Only a few changes in style were made.

Subtitle 4 - Wire tapping.

This subtitle contains provisions which presently appear in Art. 35, §§92 through 99. It deals with limitations on the use of evidence obtained through wire tapping.

Section 10-403 deals with an ex parte order for interception and is derived from Art. 35, §94. Section 94(a), dealing with duration and renewal of an order for interception, has been invalidated by the Court of Special Appeals in State v. Siegel, 13 Md. App. 444 (1971). The Court emphasized that all wire-taps conducted by State or local law enforcement officers in Maryland should be based on the statutes; i.e. Art. 27, §§125A through 125D and Art. 35, §§92 through 99. However, the Court also emphasized that the State statutory authority concerning wire tapping may be more restrictive but not more liberal than the federal authority contained in Title 18, §2510 et. seq. of the United States Code and that to the extent the State statutory authority is broader than the federal, it is invalid and the federal provisions will control.

During the last session of the legislature, Delegates Owens and Heintz introduced HB 962. The bill, with some modifications, proposed as State law the basic provisions of the federal wire-tap law (Title 18, USC, §2510 et. seq.) and repeals the existing state laws applying to wire tapping. The bill passed both Houses, but was vetoed by the Governor because, in his opinion it authorized "unwarranted spying and intrusion on people's privacy".

This section is an attempt to cure all inconsistencies in the present law. It is modified to comply with the federal law and with the Siegel case.

Subtitle 5 - Proof of foreign laws.

This subtitle is the Uniform Judicial Notice of Foreign Law Act. The Act was enacted for the purpose of eliminating two "worn out" rules of the common law. First was the rule forbidding judicial notice of American law in sister states of the United States. The second was the rule that the decision on the laws of sister states should be a question of fact for the jury to decide. The Act presently appears in Art. 35 of the Code and provides for uniform procedure in taking judicial notice of foreign laws.

The provisions of the Act have been modified only stylistically.

Subtitle 6 - Proof of foreign debt.

This subtitle contains only one section which provides that a debt of record entered in a court located in the United States or in a foreign country may be proved by an official transcript of the record under seal of the court where the record was made. This section is derived from Art. 35, §38 and contains only changes in style.

Subtitle 7 - Foreign money judgments recognition.

This subtitle is the Uniform Foreign Money Judgments Recognition Act. It presently appears in Art. 35, §53A, 53B, 53C, 53D, 53E and 53F.

Subtitle 8 - Simultaneous death.

This subtitle is the Uniform Simultaneous Death Act. It presently appears in Art. 35, §83, 84, 85, and 86 and deals basically with evidence concerning simultaneous death. Only stylistic changes are made.

Subtitle 9 - Miscellaneous rules.

This subtitle relates to evidentiary rules which were not allocated to the preceeding subtitles because of their variety.

Section 10-901 deals with corroboration of testimony. Its

provisions presently appear in Art. 35, §4.

Section 10-902 is derived from Art. 35, §7 and includes all the 1973 legislative changes. Chapter 392, Acts of 1973, removes a wife's defense of coercion in charges of murder or treason committed in her husband's presence. This is reflected in the draft of this section.

Section 10-904 contains the language presently appearing in Art. 35, §11. It would appear that this section has application largely to criminal cases despite the fact that the word "civil" is included. This word has been retained because its removal could be considered a substantive change.

Section 10-906 is derived from Art. 35, §12. This section has been organized to emphasize that its provisions do not apply to wills; see Parker v. State, 12 Md. App. 611 (1971).

The Commission decided to propose for repeal Art. 35, §37 which deals with typewritten instruments offered in evidence. The court, in Paint Corp. v. Ammerman, 264 Md. 292 (1972), observed that this section has not been cited in any case since its passage 72 years ago and as far as commercial paper is concerned, it would appear to have been superseded by Art. 95B, §3-118(b).

TITLE 11 - JUDGMENTS

This title deals with judgments and specific post-judgment procedures.

ORGANIZATION OF TITLE

Title 11 contains the following subtitles:

Subtitle 1 - Judgments - Miscellaneous

Subtitle 2 - Measure of Damages

Subtitle 3 - Interest on Automobile Liability Claims

Subtitle 4 - Judgment liens

Subtitle 5 - Execution

Subtitle 6 - Plea in bar by garnishee of defendant

Subtitle 7 - District Court

SPECIFIC MATTERS

Subtitle 1 - Judgments - Miscellaneous.

This subtitle contains provisions dealing with various types of judgments.

Section 11-101 provides that all money judgments, penalties, fines or forfeitures shall be expressed in dollars and cents. This section is derived from Art. 29, §3. The section has been modified to indicate that this provision applies only to money judgments and not to other judgments which are not expressed in money.

In Section 11-102, the provisions which presently appear in Art. 50, §6 have been modified to comply with the terminology of the Uniform Commercial Code since they are complementary to this material. The terms "bills single or obligatory" are proposed for deletion as an obsolete species of promissory notes under seal. Formerly, the seal destroyed the negotiability of these instruments. However, this is not the law today; see Art. 95B, §2-203 and 2-113.

Section 11-103 deals with confessed judgments for unspecified amounts. Somewhat similar provisions appear in the Maryland Rules and Maryland District Rules 645 and 648. However, it seems the rules cover only confessed judgments for a specified amount whereas this section deals with judgments for an unspecified amount.

Subtitle 2 - Measure of damages.

This subtitle contains sections which provide for a specific criterion in ascertaining damages in various actions.

Section 11-201. This section deals with the judgment for an amount due on a bond, bill, covenant, or contract and is similar to that of Rule 648. It is not proposed for repeal because it contains a substantive provision.

Section 11-201 deals with measure of damages for abstracting minerals from plaintiff's land. It is derived from Art. 75, §41.

Subsection (b) of this section has been revised to conform to statutory interpretation in several cases; see Mt. Savage George's Creek Coal Co. v. Monahan, 132 Md. 654 (1918); Strathmore Mining Co. v. Bayard Coal & Coke Co., 139 Md. 355 (1921); and Superior Construction Co. v. Elmo, 204 Md. 1 (1954).

It should be noted that this statute does not provide for the measure of damages if the minerals were abstracted negligently. The cited cases acknowledge the absence of measure of damages for negligent mining but offer no explanation as to why the legislature did not codify the common law rule which does provide for the measure of damages. The court indicated that the absence of this provision may be for reasons of public policy.

The commission feels that the legislature may want to reconsider this issue.

Subtitle 3 - Interest on automobile liability claims.

This subtitle contains only one section dealing with interest on automobile claims.

It contains only stylistic changes. No court case has been reported to date which applies to or interprets this section. It should be observed that Rule 642 provides for interest on certain judgments rendered in trial courts of general jurisdiction. Maryland District Rule 642 provides for interest in judgments rendered in the District Court.

Subtitle 4 - Judgment liens.

This subtitle deals with various judgment liens. It is derived from Art. 16.

Section 11-401 is a definition section. It is introduced to avoid repetition of similar provisions in subsequent sections. The Court of Appeals and the Court of Special Appeals are included in the definition of "court" to cover a gap existing in the present statutes. This change is consistent with Maryland Rule 620.c.

Section 11-402. The provisions of this section, dealing with judgment liens, presently appear in Art. 16, §131, Art. 17, §§18, 19, and 21, Art. 26, §20, and Art. 26, §150(b). An exception as to leases from year to year and leases for terms of not more than five years and not renewable applies to the United States District Court judgment liens as well. Although Art. 17, §§18 and 19 are silent on that subject, the Commission believes that this creates no conflict since 28 USCA, §38, provides, inter alia, that "every judgment rendered by a district court within a State shall be a lien on the property located in such State in the same manner, to the same extent, and under the same conditions as a judgment of a court of general jurisdiction in such State, and shall cease to be a lien in the same manner and time."

Subtitle 5 - Execution.

This subtitle deals with procedures regarding execution of a judgment by a sheriff. It contains provisions which presently appear in Articles 9, 16, 75, and 83.

Section 11-501 deals with the power of a sheriff to seize and sell property, and is derived from Art. 83, §1. This section, which originally applied only to the sale of real property, is expanded to apply to personal property as well. The commission believes that this

does not constitute a substantive change as the sheriff's power to seize and sell chattels is recognized, at least impliedly, by Art. 87, §§30, 39A and 39B. The reference to "other officers" is proposed for deletion as unnecessary. Sec. 2-606 of the ^{Courts Article,} / applicable to constables, and Rule 117.b., applicable to elisors, provide that these officers have the powers of a sheriff.

Section 11-502, dealing with notice of the time, place and terms of sale, is derived from Art. 83, §§3, 5, and 7. The reference to coroner is proposed for deletion because coroners do not perform these duties any more. The reference to elisors and constables is also proposed for deletion for the reasons stated above.

Section 11-504, dealing with exemption from execution, is derived from Art. 83, §§8, 9, 11, and 13. The number of appraisers who appraise the property selected is reduced from three to one. The commission believes that this eliminates an unnecessary multiplication of charges to the defendant.

Section 11-507 deals with exemptions in relation to certain liens, and is derived from Art. 83, §12. The language has been modified to comply with the present terminology of the Code.

Section 11-510 provides that the court may order the sheriff to bring money into court upon satisfaction of a judgment by a defendant. It is derived from Art. 87, §14. This section presently provides, inter alia, that the sheriff has no stay or right to appeal from an amercement under this section. The provision is proposed for repeal as being generally unfair and possibly violating due process.

Section 11-512, dealing with injunction of personal property under execution, is derived from Art. 16, §96. This section presently appears to require the sheriff to return the seized property immediately on

the issuance of an injunction despite the fact that the injunction may later be dissolved. Because such a return of property may be detrimental to a plaintiff, a provision is added granting discretion to the court as to whether the sheriff must return the property seized.

Subtitle 6 - Plea in bar by garnishee of defendant

This is a one-section subtitle dealing with a plea in bar by a garnishee against a defendant, and is derived from Art. 9, §33.

Only changes in style were made.

Subtitle 7 - District Court.

This subtitle contains provisions which relate to judgments of the District Court. It contains only three short sections which are derived from Art. 26, §150(b) and (c), as amended by ch. 67 (SB 432) Acts of 1973. The provisions dealing with interest on a judgment, time for enforcing a judgment, revival and death of a plaintiff and defendant are proposed for repeal because they are covered by Maryland District Rules. Also, the portion of Art. 26, §150(b) providing for a conveyance of a defendant's interest in land to a purchaser following the sale under an attachment of fieri facias issued out of the District Court is proposed for deletion because it is covered by Art. 21, §14-103 (a).

TITLE 12 - APPEALS, CERTIORARI, AND CERTIFICATION OF QUESTIONS.

Title 12 covers general rights of appeal. For the most part, it is a revision of material now contained in Art. 5 of the Code, which is basically arranged according to the court to which the appeal is taken.

Title 12 takes the opposite approach, and its subtitles are arranged according to the court from which the appeal is taken. The theory is that a losing litigant or his lawyer knows the court in

which he has just lost, but may not know to which court the appeal lies. Thus, it is more useful to arrange the materials in the "appeal from" than the "appeal to" manner.

This title does not include provisions pertaining to appeals from local legislative bodies or from State or local administrative agencies. These provisions often differ greatly in their details, making generalization difficult. The Commission proposes to codify them with the substantive law to which they relate. As a consequence, provisions of Art. 5, §§27 and 29, dealing with appeals from county commissioners, will be allocated to the Local Government Article, and for the present are transferred to Art. 25. The provisions of Art. 5 which deal primarily with allocation and treatment of costs appear in Title 7 of the Courts Article. Finally, some provisions of Art. 5 appear to be obsolete or fully covered by rules. These include Sections 4, 12B, 16, 22, and 42. The Commission suggests their repeal.

ORGANIZATION OF TITLE

Title 12 contains the following subtitles:

Subtitle 1 - Definitions

Subtitle 2 - Review of cases in Court of Special Appeals

Subtitle 3 - Review of decisions of trial courts of general jurisdiction.

Subtitle 4 - Review of decisions of District Court.

Subtitle 5 - Review of decisions of Orphans' Courts

Subtitle 6 - Certification of Questions of Law

Subtitle 7 - Practice on Appeal

SPECIFIC MATTERS

Subtitle 1 - Definitions.

Subtitle 1 contains definitions adopted to avoid unnecessary

repetition of terms in subsequent subtitles. For example, "circuit court" includes the component courts of the Supreme Bench of Baltimore City; "criminal case" includes a motor vehicle or traffic case; and "final judgment" includes judgment, decree, sentence, order, determination, decision, or other appealable action of a court.

Subtitle 2 - Review of cases - Court of Special Appeals.

This subtitle deals with certiorari to the Court of Special Appeals and exceptions thereto. In Sec. 12-201, the last clause of the last sentence, which provides that the petition for writ of certiorari may be filed not later than 30 days after the Court of Special Appeals mandate is issued, is implied from Maryland Rule 812. The Commission believes without the limitation on post-decision certiorari it may be thought that the statute is intended to supersede the 30 day limitation now contained in the rule. The provision of §12-202 dealing with leave to appeal from refusal to issue a writ of habeas corpus is derived from Art. 42, §20.

Subtitle 3 - Review of decisions of trial courts.

Subtitle 3 deals with review of decisions of trial courts of general jurisdiction.

Section 12-301, dealing with appeals from final judgments, includes a substantive change. This section is modelled on Art. 5, §§1 and 6 as well as other portions of Art. 5. These sections provide that an appeal may be taken "from any final judgment or decree subject to a stated exception relating to judgment when the trial court itself has been reviewing a decision of a lower court." However, case law spells out another exception, namely, that no appeal lies from a trial court's exercise of special statutory original jurisdiction as opposed to common-law original jurisdiction. This exception is not

recognized in the statute and may cause problems for the litigant and for the legislative draftsman. The Commission eliminates the problem and in this draft recognizes the actual situation providing for all such appeals in this section. However, this section applies only to appeals from exercises of original jurisdiction. If a trial court of general jurisdiction is exercising appellate jurisdiction, no appeal lies unless expressly granted by law; see §§12-302(a) and 12-305.

Section 12-302 provides for an exception as to a right of appeal from a final judgment. This exception relates to an appeal from the District Court, an administrative agency, or a local administrative body and to appeals in contempt cases and the decision of judges of a circuit court sitting in banc. This section is intended to continue the present law and contains no substantive changes.

Section 12-304, dealing with appeals in contempt cases and scope of review, is derived from Art. 5, §18. In subsection (a), the rule established by Art. 5, §7(e), "including an interlocutory order ... to the action" has been added and made applicable to both law and equity. Subsection (b) contains the exception now set forth in Art. 5, §7(e).

Section 12-305, dealing with discretionary review of decisions of trial courts of general jurisdiction acting in appellate capacity, is derived from Art. 5, §21. Section 21 authorizes such review when, inter alia, "the same statute has been construed differently by the courts of two or more circuits". However, it does not address itself to the problem of different construction of the same statute by two or more judges in a multi-judge county. The draft fills these gaps by permitting, although not requiring, further review whenever any two

judges of a trial court of general jurisdiction hearing an appeal from the District Court construe the same statute differently.

Subtitle 4 - Review of decisions of the District Court.

This subtitle deals with the review of decisions of the District Court.

Section 12-401(b) follows the language of Maryland Rule 1312. In general the matter of time for appeal has been left to rule, but the 1972 General Assembly decided to retain certain specific statutory appeal times for some matters within District Court jurisdiction. This suggests the desirability of continued Code treatment of the subject at the District Court level, and this approach is reflected in this draft. The draft makes it clear that Rule 1312 is in fact subject to the exceptions set forth in paragraph (2) of this subsection. Paragraph (2) preserves the special short appeal times in certain grantee suits and in certain landlord-tenant cases.

Section 12-401(c), dealing with de novo and non-de novo appeals, is derived from Art. 26, §156(a). It does not contain any substantive changes. However, it fails to resolve the problem of a civil appeal in a case with no monetary claim for damages but with a large monetary impact, as with certain landlord-tenant cases. It is not clear from the present statute whether the appeal is de novo or on the record because the amount in controversy is not expressed in dollars. Similar questions arise in connection with the District Court's exclusive original jurisdiction and with the right to claim jury trial in a civil case originally filed in the District Court. Since important substantive policy questions are involved here, the Commission feels that any change would be beyond the scope of the Commission's authority. Therefore, it is suggested that these issues be considered by the General Assembly at the appropriate time and resolved accordingly.

Subtitle 5 - Review of decisions of Orphans' Courts.

This subtitle deals with an appeal from a final judgment of an Orphans' Court to the Court of Appeals, the circuit court, or the Superior Court. Its provisions are derived from Art. 5, §§9, 10, 25, and 26. It contains no substantive changes.

Subtitle 6 - Certification of Questions of Law.

This subtitle contains the provisions of the Uniform Certification of Questions of Law Act which presently appears in Art. 26, §§161-172, except for §170, which is unnecessary in view of the general severability clause enacted by Ch. 241, Acts of 1973. Only stylistic changes were made.

Subtitle 7 - Practice on Appeal.

This subtitle deals with various provisions regarding stay of proceedings in the orphans' and juvenile courts and sentencing in criminal cases following appeals.

Section 12-702, dealing with sentence following appeal, combines provisions of Art. 5, §§17 and 43.

Section 12-702(a) provides for mandatory credit for time served when an appellate court remands a criminal case to a lower court for resentencing. The first sentence merely restates the provisions of Art. 5, §17. It requires, upon resentencing, credit for time served under the previous sentence from the date of original conviction.

The second sentence is new and states a rule of constitutional law set forth in North Carolina v. Pearce, 395 US 711 (1969) and Wright v. State, 11 Md. App. 673 (1971). The rule requires credit for pre-sentence jail time if a statutory maximum sentence was imposed.

Subsection (b) states the rule of North Carolina v. Pearce, 395

U.S. 711 (1969), which prohibits an increase in sentence after retrial, unless certain conditions are met. This rule is likewise not embodied in statutory law at the present time, except with respect to sentencing after a de novo appeal from the District Court (Art. 5, §43).

Section 12-702 leaves open the question of whether credit should be mandated for all pre-sentence jail time, because this precise question has not been decided by the Supreme Court. The Commission on Criminal Law would require such credit; see §70.30.3 of its proposed Criminal Code. In this connection, it should be noted that Ch. 605, Acts of 1973, contains provisions for certain "good time" credits accruing during pre-sentence incarceration.

Subsection (c) states the statutory provision now embodied in Art. 5, §43. The Commission on Criminal Law's proposed Criminal Code, in §80.20.2, would flatly prohibit any increase on re-sentencing. However, the proposed Criminal Code provision probably does not apply to sentencing following de novo appeals. When consulted, the reporter for the Commission on Criminal Law indicated that he does not believe that this aspect of the matter was considered by that Commission.

TITLE 13 - COURT SUPPORTING AGENCIES.

Title 13 consolidates the statutes dealing with various agencies which assist the courts administratively through publication of decisions, drafting of rules, and performing other duties related to the courts' administration. It excludes statutes pertaining to the Board of Law Examiners. These provisions deal with licensing and are tentatively allocated to the proposed Article on Occupations and Professions.

ORGANIZATION OF TITLE

Title 13 contains the following subtitles:

Subtitle 1 - Administrative Office

Subtitle 2 - State Reporter

Subtitle 3 - Standing Committee on Rules

Subtitle 4 - Commission on Judicial Disabilities

SPECIFIC MATTERS

Subtitle 1 - Administrative Office.

This subtitle contains the present provisions of law dealing with the Administrative Office of the Courts.

Section 13-101(a), dealing with the State Administrative Office of the Courts and appointment and compensation of its director, is derived from Art. 26, §6. The provision of §6 which permits the director to be a part-time employee is proposed for deletion. Past experience has shown that the duties of this office are so numerous as to require a full-time director.

Section 13-101(c), dealing with the prohibition against practice of law, is derived from Art. 26, §7. The prohibition is expanded to cover practice of law in all jurisdictions. The Commission believes that the director and his employees, who are engaged full-time in their employment, do not have time to practice law in any jurisdiction while so employed.

The language of §13-102(c), dealing with the Administrative Office of the Courts of the Seventh Judicial Circuit, is now substantially identical to §13-101(c). Present law permits the director of the Seventh Circuit Administrative Office to practice if permitted to do so by the judges of the circuit. The Commission feels that this prohibition against practice should be the same as that for the State director. It consulted with the judges of the Seventh Circuit, who

agreed with this approach.

The references to the Prince George's County Council and to the county commissioners have generally been replaced by a reference to the county government of the appropriate county, or simply to the county itself. This will avoid the necessity of future amendment if the name of a county's governing body is changed.

The Commission suggests that the legislature consider adoption of a state-wide statute providing enabling legislation for the establishment of administrative offices in various circuits. At present, the only statute which deals with this subject is the one pertaining to the administrative office of the circuit court administrator for the Supreme Bench of Baltimore City, provided by Ch. 224, Acts of 1966, now codified with the Public Laws of Baltimore City. Baltimore County and Montgomery County have provided court administrators without enabling legislation.

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The Commission does not believe that enabling legislation is necessary for the establishment of a county or circuit court administrator. However, such legislation could establish a useful pattern which would encourage the creation of administrators in various jurisdictions. It might be useful to make the local administrator directly responsible to the circuit or county administrative judge and also to provide that the local administrator be an integral part of the office of the State Director of the Administrative Office of the Courts. This would be consistent with the trend towards a unified State court system; see SB 813, regular session, 1973.

Obviously, a detailed study of this proposal is beyond the scope of formal revision, but it might be a fruitful field for study by the Legislative Council.

Subtitle 2 - State Reporter.

This subtitle deals with appointment, compensation, and duties of the State Reporter. It is derived from Art. 80 and contains only stylistic changes.

Subtitle 3 - Standing Committee on Rules.

This subtitle deals with appointment of a standing committee on rules and employment of assistants to the committee, their salaries and expenses. It is derived from Art. 26, §28. Specific reference to Art. 26, §25 (rule-making power of the Court of Appeals) is proposed for deletion since the real function of the committee is to assist the court with its general rule-making activities. The Commission believes that it would be unwise to limit the committee's role to giving advice with respect to only one statutory grant of power.

Subtitle 4 - Commission on Judicial Disabilities.

This subtitle is derived from Art. 40, §45. This section was adopted prior to the 1970 constitutional amendment vesting final disciplinary power in the Court of Appeals instead of the General Assembly. The draft eliminates all reference to the General Assembly consistent with the 1970 amendment. This subtitle grants the Court of Appeals rule-making power with respect to procedures to be followed by the Commission, but the statutory grant of such power is unnecessary because Art. IV, §4B(a) provides that "the Court of Appeals shall prescribe by rule the means to implement and enforce the powers of the Commission and the practice and procedure before the Commission."

SPECIAL SECTIONS OF THE BILL

As indicated in earlier portions of this Report, the new Courts Article itself is set forth in Section 1 of SB 1. The bill also contains 20 additional sections, some of which require comment.

Section 2 repeals provisions of the present Code which are either incorporated in the Courts Article or which are rendered unnecessary by it. The cross-reference table may be consulted to determine the precise disposition of each of these sections.

Section 3 lists sections transferred without change from one Article of the present Code to another Article of the present Code. These transfers are mainly for organizational purposes. They will facilitate the future course of Code revision.

Section 4 amends provisions of Articles 25, 27A, 70, and 93 to adjust for changes made in the Courts Article and to retain some parts of provisions of present Code sections which are in general proposed for repeal.

Section 5 in effect transfers from Art. 5 to Article 25 sections 27 and 29 of the former Article, merely eliminating internal cross-references no longer applicable.

Section 6 similiarly transfers certain provisions from Article 26 to Article 27.

Section 7 transfers the District Court criminal court venue provisions from Art. 26 to Art. 27.

Section 8 transfers provisions of Art. 26 relating generally to bail to Art. 27. Present Art. 27, §616 1/2 appears as subsection (c) of amended §616 1/2. The transferred Art. 26 provisions are subsections (a), (b), and (d).

Section 9 transfers from Articles 42 and 75 to Article 27 provisions dealing with detainers and transfer of prisoners. It should be noted that Section 3 of the bill creates a new Section 618 of Article 27 by transferring Article 42, Section 18.

Section 10 places in Article 27 provisions relating to the sentencing power of a District Court judge. The intention is to retain the present law which was intended to give a District Court judge the same powers in this regard as judges of other courts exercising criminal jurisdiction.

Section 11 amends portions of Articles 53 and 93 to fill gaps which would otherwise be created by the repeal of Art. 10, Section 9.

Section 12 transfers judicial pension provisions from Article 26 to Article 73B. There is no change in substance. The material appears as new matter because certain improper statutory cross-references have been eliminated.

Section 13 has the effect of transferring provisions dealing with extension of time for collection of taxes from Article 26 to Article 81.

Section 14 places in Article 93 present provisions of Article 36 dealing with appearance fees in the orphans' courts.

Sections 15 through 20 contain various provisions retaining rights of certain employees and providing for construction of the Act. The Commission believes that none of these provisions are appropriate for codification.

Section 21 provides for the effective date of various portions of the Courts Article. This is generally January 1, 1974, but special provisions are inserted for pending proceedings under the Uniform

Absence as Evidence of Death and Absentees' Property Act, certain statutes of limitation, the addition of a third judge for the circuit court for Harford County, and some salary increases which can not constitutionally become effective until a subsequent date.

SUMMARY OF MATTERS SUBMITTED FOR SPECIAL CONSIDERATION BY THE
GENERAL ASSEMBLY.

As indicated in this report, the Commission has suggested that various matters involving substantive policy be considered by the General Assembly.


A brief summary of the most important of these matters, on a section-by-section basis, follows:


- Sec. 3-501. Should slander as to chastity be actionable by both sexes in accordance with Art. 46 of the Declaration of Rights?
- Sec. 3-839. Does this section, which allows jailing a parent who refuses to pay for damages caused by his child, violate Art. III, §38 of the Maryland Constitution?
- Sec. 3-901. Is the inclusion of bodies politic in the definition of "person" intended to limit or abolish the doctrine of sovereign immunity?
- Sec. 3-904. Should this section be made applicable to the case of the death of a parent, widower, or divorced parent?
- Sec. 4-401. Is a jury trial available in a landlord-tenant case with no monetary claim for damages? Should it be?
- Title 5. Should the statute of limitations be extended in a case where a party mistakenly brings suit in a federal court?
- Sec. 5-108. Was this section, which limits a builder's liability, intended as a statute of limitations or a prohibited action? When does it apply?
- Sec. 6-301. Is the appointment of only one State official on whom process may be served desirable, if it can be served directly on the defendant?
- Sec. 6-405. Should this section or Art. 93A procedures control the approval of a settlement of a suit brought on behalf of an infant?
- Sec. 7-402. Should sheriffs' fees be made uniform throughout the State?

- Title 8. Should there be a statute concerning the swearing of grand or petit jurors and requiring grand jury secrecy?
- Sec. 8-106. Should there be a more uniform approach to juror compensation?
- Sec. 9-202. Should the compensation of witnesses be made uniform State-wide?
- Sec. 11-201. Should this section be expanded to cover the negligent mining of minerals?
- Sec. 12-401. Should a civil appeal from the District Court in a case with no monetary claim for damages but with a large monetary impact, be a de novo appeal or an appeal on the record?
- Sec. 13-102. Should there be State-wide enabling legislation for establishment of administrative offices of courts in all circuits and counties?

The Commission does not suggest that any or all of these matters need be resolved at the special session. Some of them may require extensive study, and many could appropriately be handled by the Legislative Council. This list is intended primarily as an aid in determining what matters should be given further consideration following the special session.

Respectfully submitted,


William S. James, (gc)
President of the Senate
Chairman.


Thomas Hunter Lowe,
Speaker of the House of Delegates
Vice-chairman.

